

ACT 338

S.B. NO. 5

A Bill for an Act Relating to a Department of Corrections.

Be It Enacted by the Legislature of the State of Hawaii:

SECTION 1. Chapter 26, Hawaii Revised Statutes, is amended as follows:

1. By adding a new section to be appropriately designated and to read as follows:

“§26- Department of corrections. (a) The department of corrections shall be headed by a single executive to be known as the director of corrections.

(b) The department of corrections shall be responsible for the formulation and implementation of state policies and objectives for correctional programs and for the administration and maintenance of all correctional facilities and services, including but not limited to the following:

- (1) All facilities within the State for the care and custody of all adults detained and awaiting trial, and adults convicted of felonies and misdemeanors;
- (2) The youth correctional facilities for the care and custody of juveniles adjudicated by the family courts and committed to the department;
- (3) Parole supervision services for juveniles committed to correctional facilities;
- (4) Intake and diagnostic evaluation, including pretrial assessments for the courts, of adult offenders admitted to any correctional facility for placement in an appropriate facility and program prescription;
- (5) Transportation services for defendants who are under the care and custody of the department to and from the courts for court-ordered appearances;
- (6) The development and management of a correctional industries program;
- (7) Systematic analysis of existing and proposed correctional programs, evaluations of the analysis conducted by governmental agencies and other organizations, and recommendations to the governor and the legislature of programs which represent the most effective allocation of resources for correctional programs;
- (8) Qualification for, acceptance, disbursement, or utilization of any private or federal moneys or services available, and contracting for services when required;
- (9) The preparation and submission of an annual report and such other reports as may be requested to the governor and to the

legislature on the implementation of this section and all matters related to corrections; and

- (10) Provision of assistance to and coordination with all public and private agencies providing criminal justice services, including the maintenance of contracts with local, state, and federal officials concerned with criminal justice.

(c) The Hawaii paroling authority, the criminal injuries compensation commission, and the Hawaii criminal justice commission are attached to the department of corrections for administrative purposes only. The functions and authority heretofore exercised by the department of social services and housing relating to adult and juvenile corrections, the intake service centers, and the judiciary relating to the functions of the sheriff's office and judiciary security personnel that relate to the transportation of defendants under the care and custody of a correctional facility for required court appearances, are transferred to the department of corrections established by this section."

2. By amending section 26-4 to read:

"§26-4 Structure of government. Under the supervision of the governor, all executive and administrative offices, departments, and instrumentalities of the state government and their respective functions, powers, and duties shall be allocated among and within the following principal departments which are hereby established:

- (1) Department of personnel services (Section 26-5)
- (2) Department of accounting and general services (Section 26-6)
- (3) Department of the attorney general (Section 26-7)
- (4) Department of budget and finance (Section 26-8)
- (5) Department of commerce and consumer affairs (Section 26-9)
- (6) Department of taxation (Section 26-10)
- (7) University of Hawaii (Section 26-11)
- (8) Department of education (Section 26-12)
- (9) Department of health (Section 26-13)
- (10) Department of social services and housing (Section 26-14)
- (11) Department of land and natural resources (Section 26-15)
- (12) Department of agriculture (Section 26-16)
- (13) Department of Hawaiian home lands (Section 26-17)
- (14) Department of planning and economic development (Section 26-18)
- (15) Department of transportation (Section 26-19)
- (16) Department of labor and industrial relations (Section 26-20)
- (17) Department of defense (Section 26-21)
- (18) Department of corrections (Section 26-)"

3. By amending section 26-14 to read:

"§26-14 Department of social services and housing. (a) The department of social services and housing shall be headed by a single executive to be known as the director of social services.

(b) There shall be within the department of social services and housing a commission to be known as the board of social services which shall sit in an advisory capacity to the director of social services on matters within the jurisdiction of the department of social services and housing. The board shall consist of ten members, one from each county, other than the county of Kalawao, and five at large, and the director of health as an ex officio nonvoting member.

There shall also be within the department a commission to be known as the board of vocational rehabilitation which shall sit in an advisory capacity to the head of that division charged with the administration of vocational rehabilitation laws and allied services. The board shall consist of eleven members, one from each judicial circuit and four at large, with the directors of health and labor[,] and industrial relations, and the superintendent of education, as ex officio voting members.

(c) The department shall administer programs designed to improve the social well-being and productivity of the people of the State. Without limit to the generality of the foregoing, the department shall concern itself with the problems of human behavior, adjustment, and daily living through the administration of programs of family, child and adult welfare, economic assistance (including costs of medical care), rehabilitation toward self-care and support, delinquency prevention and control, [treatment and rehabilitation of adult and juvenile offenders,] public housing, and other related programs as provided by law.

The Hawaii housing authority, as now constituted by chapter 356 shall be a constituent corporate unit of the department of social services and housing with the director of social services as an additional commissioner, ex officio, of the housing authority, serving for a term consistent with the director's appointment. Notwithstanding any other provisions of this chapter, but subject to the administrative control of the director of social services, the functions, duties, and powers of the housing authority, as heretofore provided by law, shall be vested in the Hawaii housing authority.

[The Hawaii paroling authority is placed within the department of social services and housing for administrative purposes only.]

(d) The functions and authority heretofore exercised by the department of public welfare, the department of institutions (except for Waimano home and the state hospital transferred to the department of health), the boards of prison inspectors, the bureau of sight conservation and work with the blind (except for the transcription services program transferred to the department of education), the council on veterans' affairs, and any other agency of the state or county governments with respect to the assistance and care of the indigent and medically indigent as heretofore constituted are transferred to the department of social services and housing established by this chapter."

4. By amending section 26-52 to read:

"§26-52 Department heads and executive officers. The salaries of the following state officers shall be as follows:

- (1) Effective January 1, 1986, the salary of the superintendent of education shall be \$76,000 a year.
- (2) The salary of the president of the University of Hawaii shall be set by the board of regents, but shall not exceed \$95,000 a year.
- (3) Effective January 1, 1986, the salaries of all department heads or executive officers of the departments of accounting and general services, agriculture, attorney general, budget and finance, commerce and consumer affairs, corrections, Hawaiian home lands, health, labor and industrial relations, land and natural resources, personnel services, planning and economic development, social services and housing, taxation, and transportation shall be \$68,400 a year.
- (4) Effective January 1, 1986, the salary of the adjutant general shall be \$68,400 a year. If the salary is in conflict with the pay and

allowance fixed by the tables of the regular army of the United States, the latter shall prevail.”

SECTION 2. Chapter 352¹, Hawaii Revised Statutes, is amended by amending the definition of “department” to read as follows:

““Department” means [that portion of the department of social services and housing concerned with matters within the purview of this chapter.] the department of corrections.”

SECTION 3. Chapter 353, Hawaii Revised Statutes, is amended as follows:

1. By amending the title to read:

“DEPARTMENT OF CORRECTIONS”

2. By repealing part I in its entirety and substituting therefor a new part to read:

**“PART I. ADMINISTRATIVE STRUCTURE,
INSTITUTIONS, AND SERVICES**

§353-1 Definitions; director may delegate powers. As used in this chapter unless the context clearly indicates otherwise:

“Department” means the department of corrections.

“Director” means the director of corrections; provided that the signing or approval of vouchers and other routine matters may be delegated by the director to any authorized subordinate.

§353-2 Appointment of director; powers and duties. (a) The director shall be appointed by the governor in accordance with section 26-31.

(b) The director shall administer the department and supervise the administration of all state correctional facilities and services under the department’s jurisdiction. The director may adopt, amend, or repeal rules pursuant to chapter 91, relating to the conduct and management of such facilities and the care, control, treatment, furlough, and discipline of persons committed to the director’s care. The rules shall be valid and binding upon all inmates, officers, and employees of such institutions, and shall be printed from time to time.

(c) The director shall appoint, subject to chapters 76 and 77, personnel necessary to carry out the functions of the department of corrections.

(d) The director shall establish written standards of conduct and operation to govern each employee, during working hours, involved with the treatment and care of persons detained in or committed to a facility, and require each employee to undergo training sessions to prepare them to comply with the standards.

§353-3 Special powers and duties. The director of corrections shall:

- (1) See that the duties of all officers and employees are efficiently and faithfully performed;
- (2) Remain fully informed at all times concerning the health, care, and treatment of detained and committed persons, the sanitary and other conditions affecting the correctional facilities under the director’s jurisdiction, and all other matters within the director’s jurisdiction;
- (3) Cause correctional facilities to be kept in a clean, healthful, and sanitary condition;

- (4) Inquire into and deal justly with all complaints made by detained and committed persons relating to their food, clothing, accommodations, training, education, work, individual correctional plan, or treatment;
- (5) Attend to the purchasing of all supplies, materials, and equipment necessary for the proper maintenance and operation of correctional facilities and for the care and maintenance of detained and committed persons, and see to the proper care, use, and disposition thereof, conformably with law;
- (6) Keep all books, accounts, and records and make such reports as may be required of the director by law;
- (7) Negotiate with private organizations or agencies for participation and cooperation in programs which further the treatment, training, education, and work of committed persons pursuant to law;
- (8) Initiate the individually prescribed correctional plan for committed persons including privileges, placement, treatment, training, education, and work in accordance with law;
- (9) Exert every effort to ensure that each inmate serving a sentence of imprisonment spends a maximum amount of time on the programs set forth in paragraphs (7) and (8). This shall be voluntary if possible. If not, the director shall prescribe a program of involuntary work within the resources of the State and the capability of the inmate;
- (10) Enforce the rules and prescribe the disposition of employees and persons on custodial care for any breach of rules or other misconduct;
- (11) Visit all state correctional facilities at least once in every sixty days and inquire into the management and operation of the same, and the care, education, recreational, vocational training, employment opportunities, and maintenance of persons under custodial care.

The director or a designated agent may transfer any committed person to or from any correctional facility under the director's jurisdiction. Nothing in this section shall be construed to prohibit the transfer of committed persons from any correctional facility to the Hawaii state hospital or other state institutions as provided by law.

§353-4 Organizational structure. (a) The department shall be composed of such divisions, branches, and offices as deemed necessary by the director to provide for all inmates:

- (1) Diagnostic evaluation and program prescription services;
- (2) Programs to effectively occupy the inmates' time and to develop positive self-images and useful skills that can prepare the inmates for their return to the community;
- (3) Supervision and counseling services;
- (4) Custodial care; and
- (5) Necessary administrative and staff support services.

(b) The Hawaii paroling authority, the criminal injuries compensation commission, and the Hawaii criminal justice commission shall be attached to the department for administrative purposes only.

§353-5 Offender release recommendations to the court. The intake service center shall notify the prosecutor's office of the appropriate county whenever it is recommending to the court that a person who is accused of murder or attempted murder in any degree or a class A felony involving

force or violence against another person be conditionally released or that bail for such person be lowered. Such notice shall be made upon the completion of the intake service center's investigation on the offender's case so as to allow the prosecutor's office of the appropriate county to be present when the court considers the recommendation.

§353-6 Establishment of community correctional centers. There shall be a community correctional center for each county under the direction and administration of the director. Any community correctional center may be integrated and operated concurrently with any other correctional facility or facilities. Each center shall:

- (1) Provide residential detention for persons awaiting judicial disposition who have not been conditionally released;
- (2) Provide residential custody and correctional care for committed misdemeanants and for felons committed to indeterminate sentences;
- (3) Provide for committed persons, correctional services, including but not limited to, social and psychiatric-psychological evaluation, employment, counseling, social inventory, correctional programming, and medical and dental services;
- (4) Provide recreational, educational, and occupational training, and social adjustment programs for committed persons;
- (5) Provide referrals to community educational, vocational training, employment, and work study programs; and aftercare, supervisory, and counseling services for persons released from centers.

§353-7 High security correctional facility. (a) The director shall maintain a high security correctional facility for the residential care, correctional services, and control of high custodial risk convicted felons or the temporary detention of high custodial risk persons awaiting trial. The high security correctional facility may be integrated and operated concurrently with any other correctional facility or facilities.

(b) The facility shall:

- (1) Provide extensive control and correctional programs for categories of persons who cannot be held or treated in other correctional facilities including, but not limited to:
 - (A) Individuals committed because of serious predatory or violent crimes against the person;
 - (B) Intractable recidivists;
 - (C) Persons characterized by varying degrees of personality disorders;
 - (D) Recidivists identified with organized crime;
 - (E) Violent and dangerously deviant persons; and
 - (F) Persons in need of major medical, psychiatric, or specialized care;
- (2) Provide correctional services including, but not limited to, psychiatric and psychological evaluation, social inventory, correctional programming, and medical and dental services; and
- (3) Provide recreational, educational, occupational training, and social adjustment programs.

§353-8 Conditional release centers for committed persons. (a) The director may establish and operate facilities to be known as conditional release centers, either operated separately, or as part of community correctional centers.

(b) The purpose of such facilities is to provide housing, meals, supervision, guidance, furloughs, and other correctional programs for persons committed to the department of corrections and to give committed persons, in selected cases, a chance to begin adjustment to life in a free society and to serve as a test of an individual's fitness for release on parole.

(c) The department shall notify the county prosecutors and police chiefs whenever a committed person is admitted to participate in a work furlough program, conditional release program, or other similar programs. Such notification shall be made in writing to the county prosecutors and police chiefs listing the conditions of such work furlough programs, conditional releases, or such similar programs thirty days prior to the commencement of the work furlough program, conditional release, or other such program.

(d) Additionally, whenever the department admits a committed person who has been convicted of an offense against the person as described in chapter 707, or of an attempt to commit such an offense, to a work furlough program, conditional release program, or other similar programs, it shall give written notice to each victim of the offense, who has made written request for such notice, of the admission of the committed person to the program. Notice shall be given to the victim at the address given on the request for notice or such address as may be provided to the department by the victim from time to time. Neither the failure of any state officer or employee to carry out the requirements of this section nor compliance with it shall subject the State or the officer or employee to liability in any civil action. However, such failure may provide a basis for such disciplinary action as may be deemed appropriate by competent authority.

§353-9 Establishment of temporary correctional facilities. The director, with the prior approval of the governor, may establish, from time to time, temporary correctional facilities, if required in conjunction with projects or specialized service authorized by law. The temporary facilities shall be discontinued upon termination of the project.

§353-10 Intake service centers. There shall be within the department of corrections, an intake service center for adults in each of the counties, to screen, evaluate, and classify the admission of persons to community correctional centers. Each center shall be directed and managed by a manager and shall be staffed by a team of psychiatrists, social workers, technicians, and other personnel as may be necessary. The director of corrections may appoint full-time or part-time professional and clerical staff or contract for professional services.

The centers shall:

- (1) Provide orientation, guidance, and technical services;
- (2) Provide social-medical-psychiatric-psychological diagnostic evaluation;
- (3) Provide pretrial assessments on adult offenders for the courts and assist in the conduct of presentence assessments on adult offenders and the preparation of presentence reports when requested by the courts;
- (4) Provide correctional prescription program planning and security classification;
- (5) Provide such other personal and correctional services as needed for both detained and committed persons;
- (6) Monitor and record the progress of persons assigned to correctional facilities who undergo further treatment or who participate in prescribed correctional programs; and

- (7) Centralize the collection and maintenance of all information and statistics relating to detained and committed persons under the department's jurisdiction.

§353-11 Access to correctional facilities and records; instituting of inquiries and securing information. (a) The Hawaii paroling authority and every member thereof and the director, at all times, shall have free access to all correctional facilities throughout the State, wherein persons convicted of crime are confined, and to all records and books kept in connection therewith, and may institute inquiries about any committed person whether confined or on parole.

All circuit judges, district judges, prosecuting attorneys, sheriffs, police officers, and other court and corrections officials and employees shall furnish, when called upon by the paroling authority or director, all information that may be possessed concerning any committed person.

(b) Upon the refusal of any person in charge of any such correctional facility to give free access thereto or to any records or books kept in connection therewith, or of any such officer, district judge, sheriff, official, or employee to furnish such information, the paroling authority or director may make informal application in writing to any circuit court, reciting the facts and requesting an order directing the person concerned to give such access, or furnish such information and the court, after such reasonable notice to the person as it shall direct, shall proceed to hear the application and shall make such order as may appear proper. In case of the refusal of a circuit judge to furnish information as is required by this section, the paroling authority or director may apply to the supreme court for relief in the same manner as in the case of an application to a circuit court provided in this section. The circuit courts and the supreme court shall have jurisdiction and all powers necessary for the purposes of this section.

(c) In all investigations made by the paroling authority or director and in all proceedings before it or the director, the paroling authority and each member thereof and the director shall have the same powers respecting administering oaths, compelling the attendance of witnesses, and the production of documentary evidence and examining witnesses as are possessed by circuit courts. In case of disobedience by any person of any order of the paroling authority or any member thereof or the director or of any subpoena issued by it or the director or of the refusal of any witness to testify to any matter regarding which the witness may be questioned lawfully, any circuit judge, on application by the paroling authority or a member thereof or the director, shall compel obedience as in case of disobedience of the requirements of a subpoena issued from a circuit court or a refusal to testify therein. The fees and traveling expenses of witnesses shall be the same as are allowed witnesses in the circuit court and shall be paid by the State on vouchers approved by the director out of any appropriation or funds available for the expenses of the department.

§353-12 Correctional records, documents. The director shall establish a record of all facts relating to the admission, sentence, commutation, parole, pardon, discharge, escape, death, and correctional programs of any committed person, all actions that are taken for breach of correctional rules, and all other occurrences of note concerning the committed person.

The director or a designated agent shall file all warrants, mittimus, processes, and other official papers, or the attested copies of them, by which any committed person has been committed, paroled, liberated, or retaken and they shall be safely kept in a suitable box or safe. Upon the death, resignation, or removal from office of the person so having custody of the

papers, they shall be delivered, together with all other official records, papers, and journals, to the person's successor or to any other officer or person duly appointed to receive them. In default of such delivery the director or a designated agent, as the case may be, if living, may be held liable for theft as provided by section 708-830, and shall also be civilly liable in damages to any other person who is injured by such nondelivery. If the director or agent, as the case may be, is dead, the civil liability shall attach to such person's personal representatives and the sureties upon such person's official bond, if any has been required jointly and severally. In addition to the civil liability, the person or the person's personal representatives and sureties on the official bond shall forfeit and pay for each such default in delivery the sum of \$200 to be recovered for the use of the general fund of the State.

§353-13 Examination by medical officer. The medical officer of a correctional facility shall carefully examine any committed person upon admission and shall establish a medical record and enter therein a statement of the committed person's physical condition upon entry and all subsequent medical treatment and examination made while such person is residing at a state correctional facility.

§353-14 Cash and clothing furnished discharged committed person, when. Upon the discharge or parole of any committed person who has undergone a commitment or sentence of more than one year, the committed person shall be furnished by the Hawaii paroling authority, with funds of not more than \$200 and clothing sufficient to meet the committed person's immediate needs. The expenditures so made by the Hawaii paroling authority shall be included among the accounts for cost and maintenance of committed persons.

§353-15 Transfer of committed persons affected with communicable disease. Upon written recommendation of the director of health that a committed person determined to have a communicable disease be removed to any hospital, settlement, or place for care and treatment of the communicable disease as designated by the director of health for such specialized care and treatment, the director of corrections may direct any official having custody of any committed person convicted of a felony and incarcerated in a state correctional facility to cause the committed person to be removed to such a place as designated by the director of health, until discharged under chapter 325 or 326 or until the maximum sentence has been served. Any such committed person who may be discharged before the maximum term of imprisonment shall be returned to the state correctional facility from which the committed person was removed. Any such person who has served the maximum sentence before the committed person is discharged under chapter 325 or 326 shall remain in the custody of the director of health until lawfully discharged or removed by direction or permission. Supervision, care, and treatment of the committed person transferred to any hospital, settlement, or place for the care and treatment of the communicable disease shall be governed by the rules, policies, and procedures of the department of health.

§353-16 Transfer of committed felon to federal institution. The director, with the approval of the governor, shall effect the transfer of a committed felon to any federal correctional institution for imprisonment, subsistence, care, and proper employment of such a felon.

§353-17 Committed persons, furlough, employment. (a) The director or a designated agent may grant furloughs to committed persons with a minimum or lower security classification in any correctional facility of the department for the purpose of employment, social reorientation, education, or training, or any other valid purpose as determined by the director. Special out-of-state furloughs may be granted to those already otherwise furloughed, at no cost to the State, when death or critical illness or injury to the committed person's immediate family occurs. Any committed person who is engaged in private employment, by contract or otherwise, not under the immediate custody of the State shall not be considered an agent or employee of the State. Any moneys earned from employment by such person shall be used to satisfy a restitution order and to reimburse the State for the cost of room and board. If any earned moneys remain after these expenses have been paid, that amount shall be held in an individual account for the committed person.

When an inmate is granted a special out-of-state furlough, the director shall inform the authorities of the state to which the inmate is to be furloughed of the inmate's arrival.

(b) Full power to enforce the terms and conditions of furlough and to retake and reincarcerate a furloughed committed person is conferred upon the director or designated agent. The director or a designated agent, at any time, may issue a warrant authorizing the arrest and return to actual custody of any furloughed committed person for the purpose of ascertaining whether or not the terms and conditions of furlough have been violated so as to justify revoking the furlough and to retake and reincarcerate the furloughed committed person. The administrators of all of the correctional facilities of the State, the chief of police of each county, all police officers of the State, and all correctional facility officials shall execute any such warrant of arrest in like manner as an ordinary criminal process.

(c) Any furloughed committed person retaken and reincarcerated as provided in this chapter shall be confined according to the committed person's sentence for that portion of the committed person's term remaining unserved at the time of furlough, but subsequent furloughs, in the discretion of the director or designated agent, may be granted to a committed person during the life and in respect of sentence.

§353-18 Director to fix committed persons' compensation. The director, by rule, may classify, grade, and fix earnings to be paid to committed persons who may be confined in any correctional facility of the State.

§353-19 Compensation for labor or training by committed persons. Every committed person, who is working within a state correctional facility or who is in such training or educational programs as the director or a designated agent pursuant to law prescribes, may be allowed such graduated sums of money as the director by rule determines. Any committed person engaged in work, training, or education pursuant to this section or work pursuant to this chapter or chapter 354 shall not be affected by chapter 386.

§353-20 Custody of moneys; accounts for committed persons, etc. All sums collected under this chapter and any other authorized sources shall be deposited by the department into an individual trust account to the credit of the committed person. The department shall maintain individual ledger accounts for each committed person and shall issue to each committed person a quarterly statement showing credits and debits.

§353-21 Withdrawals; forfeitures; etc. The department shall allow any committed person under its direction to draw from funds in the committed

person's account such amounts and for such purpose as it may deem proper. Upon the parole or discharge of a committed person, the department shall pay the committed person any money to which the committed person may be entitled under this chapter. Upon the death of any committed person during incarceration, all funds to which the committed person may have been entitled shall be distributed as provided by law in the same manner as the committed person's other property; provided that the funds shall first be used to satisfy any restitution order in that committed person's name or any reimbursements to the State the director has determined is owed by the committed person.

§353-22 Earnings exempt from garnishment, etc. No moneys earned by a committed person and held by the department, to any amount whatsoever, shall be subject to garnishment, levy, or any like process of attachment for any cause or claim against the committed person, except for restitution to victims by order of the court.

§353-23 Disposition of property subject to action for damages. No disposition of any estate, either by will or otherwise, after the arrest for crime of which the committed person was convicted, whether the sentence is for life or otherwise, shall have any advantage or preference over the claim of any person entitled to damages for a private injury committed by the criminal, unless the disposition was made for a valuable and equivalent consideration to a person ignorant of the arrest.

§353-24 Guardians of committed persons, appointed when. Whenever a person is sentenced to imprisonment for any felony for a term exceeding one year, any judge having probate powers, upon application, may appoint a guardian to have the care and management of the committed person's estate, real and personal, during the term of imprisonment or until the committed person is finally discharged from the sentence. The letters of guardianship shall be revoked by the pardon or final discharge of the committed person, but the revocation shall not invalidate legal acts done by the guardian.

§353-25 Powers and duties of guardian. Every guardian appointed for any committed person shall pay all the just debts due from the committed person out of the committed person's personal estate, if sufficient, and if not, out of the committed person's real estate, upon obtaining an order for the sale thereof from the judge. The guardian shall also settle all accounts of the committed person, and demand, sue for, and receive all debts due to the committed person, and, with the approbation of the judge, may compound for the same and give a discharge to the debtor. The guardian shall appear for and represent the ward in all legal suits and proceedings, except when another person is appointed for that purpose.

The guardian shall have all the rights and duties, as well as the responsibilities, respecting the management and disposal of the committed person's estate, as appertain to the guardian of a minor or insane person. The guardian shall manage the estate without waste, and the profits thereof, so far as may be necessary, for the comfortable and suitable maintenance of the committed person's family, if there be any, and if the profits are insufficient for that purpose, may sell the real estate and apply the proceeds thereto, upon obtaining the license of the judge.

§353-26 Removal of guardian. The guardian may be removed, and another guardian appointed in the former guardian's place, whenever the judge thinks there is just cause for removal.

§353-27 Compensation; expenses. Every such guardian shall have such compensation for the guardian's services as the judge before whom the ward's accounts are settled considers just and proper. The guardian shall also be allowed the amount of reasonable expenses.

§353-28 Property given to committed persons. All property given or in any manner whatsoever accruing to a committed person, shall vest in the committed person's guardian, if the committed person is sentenced for a term of years, to be disposed of in like manner with the committed person's other property; or if the committed person is sentenced for life, shall vest in the committed person's heirs or legatees; provided that any funds accumulated by the committed person and placed into an account as provided under section 353-20 shall be under the control and management of the director.

§353-29 What officials may visit. The governor, lieutenant governor, attorney general, director of finance, director of health, comptroller, judges of all state courts, the ombudsman, the mayors of the counties, members of the legislature, and members of county councils shall be allowed at suitable hours to visit any state correctional facility.

§353-30 Others by permission. Only official visitors shall be allowed to visit any state correctional facility or to have any oral or written communication with a committed person, unless with the written permission of the administrator of the correctional facility or the director. No visitor shall deliver to or receive from any committed person any letter or message except with permission granted by the administrator of a state correctional facility pursuant to rules adopted by the director or facility administrator. Unauthorized communications, passing of documents, or visiting shall be a class C felony.

§353-31 Revolving funds for correctional facility stores. Subject to the approval of the department of budget and finance, a special revolving fund for each correctional facility store may be established for the purpose of purchasing items to be resold to inmates. All moneys received from the resale of allowable items in correctional facility stores shall be deposited in the revolving fund for each such store. The proceeds of each fund shall be expended at the discretion of the director, but shall be used only for purchasing items to be resold to inmates and for purchasing of other goods or services for inmate benefits and needs."

SECTION 4. Section 353-61, Hawaii Revised Statutes, is amended to read as follows:

"§353-61 Hawaii paroling authority; appointment; tenure; qualifications. Members of the paroling authority shall be nominated by a panel composed of the chief justice of the Hawaii supreme court, the director [of the department of social services], the president of the Hawaii correctional association, the president of the bar association of Hawaii, the head of the Hawaii council of churches, a member from the general public to be appointed by the governor and the president of the Hawaii chapter of the national association of social workers. The panel shall submit to the governor the names of not less than three persons, designated as the nominees, for chairman or as a member, for each vacancy. The governor shall appoint, in the manner prescribed by section 26-34, a paroling authority to be known as the Hawaii paroling authority, to consist of three members one of whom shall be designated chairman. Of the members first appointed after May 13, 1976, the member designated as chairman shall be appointed for a term of four years, one member shall be appointed for a term of three years, and one

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member shall be appointed for a term of two years; thereafter all appointments shall be made for terms of four years, commencing from the date of expiration of the last preceding term. Any vacancy in an unexpired term shall be filled by appointment for the remainder of the unexpired term. Nominees to the authority shall be selected on the basis of their qualifications to make decisions that will be compatible with the welfare of the community and of individual offenders, including their background and ability for appraisal of offenders and the circumstances under which offenses were committed."

SECTION 5. Section 353-62, Hawaii Revised Statutes, is amended by amending subsection (a) to read as follows:

"(a) In addition to any other responsibility or duty prescribed by law for the Hawaii paroling authority, the paroling authority shall:

- (1) Serve as the central paroling authority for the State;
- (2) In selecting individuals for parole, consider for parole all committed persons, except in cases where the penalty of life imprisonment not subject to parole has been imposed, regardless of the nature of the offense committed;
- (3) Determine the time at which parole shall be granted to any eligible individual as that time at which maximum benefits of the correctional institutions to the individual have been reached and the element of risk to the community is minimal;
- (4) Establish rules of operation to determine conditions of parole applicable to any individual granted parole;
- (5) Provide continuing custody, control, and supervision of¹ individuals;
- (6) Revoke or suspend parole and provide for the authorization of return to a correctional institution for any individual who violates parole or any condition of parole[;] when, in the opinion of the Hawaii paroling authority, the violation presents a risk to community safety or a significant deviation from any condition of parole;
- (7) Discharge an individual from parole when supervision is no longer needed;
- (8) Interpret the parole program to the public in order to develop a broad base of public understanding and support; and
- (9) Recommend to the legislature sound parole legislation and recommend to the governor sound parole administration."

SECTION 6. Section 571-48, Hawaii Revised Statutes, is amended to read as follows:

"§571-48 Decree, if informal adjustment or diversion to a private or community agency or program has not been effected. When a minor is found by the court to come within section 571-11, the court shall so decree and in its decree shall make a finding of the facts upon which the court exercises its jurisdiction over the minor. Upon the decree the court, by order duly entered, shall proceed as follows:

- (1) As to a child adjudicated under section 571-11(1):
 - (A) The court may place the child on probation:
 - (i) In the child's own home; or
 - (ii) In the custody of a suitable person or facility elsewhere, upon conditions determined by the court.
- When conditions of probation include incarceration in a youth correctional facility, the incarceration shall be for a

- term not to exceed one year, after which time the person shall be allowed to reside in the community subject to additional conditions as may be imposed by the court.
- (B) The court may vest legal custody of the child, after prior consultation with the agency or institution, in a Hawaii youth correctional facility, in a local public agency or institution, or in any private institution or agency authorized by the court to care for children; or place the child in a private home. If legal custody of the child is vested in a private agency or institution in another state, the court shall select one that is approved by the family or juvenile court of the other state or by that state's department of social services or other [equivalent] appropriate department.
 - (C) The court may fine the child for a violation which would be theft in the third degree by shoplifting if committed by an adult. The court may require the child to perform public services in lieu of the fine.
- (2) As to a child adjudicated under section 571-11(2):
- (A) The court may place the child under protective supervision, as hereinabove defined, in the child's own home, or in the custody of a suitable person or agency elsewhere, upon conditions determined by the court.
 - (B) The court may vest legal custody of the child, after prior consultation with the agency or institution in a local governmental agency or institution licensed or approved by the State to care for children, with the exception of an institution primarily for the care and treatment of children committed under section 571-11(1) or in any private agency or institution authorized by the court to care for children. If legal custody of the child is vested in a private agency or institution in another state, the court shall select one that is approved by the family or juvenile court of the other state or by that state's department of social services or other [equivalent] appropriate department; provided that the child may not be committed to a public or private institution operated solely for the treatment of law violators.
- (3) An order vesting legal custody of a minor in an individual, agency, or institution under section 571-11(2) shall be for an indeterminate period but shall not remain in force or effect beyond three years from the date entered, except that the individual, institution, or agency may file with the court a petition for renewal of the order and the court may renew the order if it finds such renewal necessary to safeguard the welfare of the child or the public interest. The court, after notice to the parties, may conduct a hearing on the petition. Renewal may be periodic during minority, but no order shall have any force or effect beyond the period authorized by section 571-13. An agency granted legal custody shall be subject to prior approval of the court in any case in which the child is to reside without the territorial jurisdiction of the court and may be subject to prior approval in other cases. An individual granted legal custody shall exercise the rights and responsibilities personally unless otherwise authorized by the court.

- (4) Whenever the court commits a child to the care of the director of social services or director of corrections, or vests legal custody of a child in an institution or agency it shall transmit with the order copies of the clinical reports, social study, and other information pertinent to the care and treatment of the child, and the institution or agency shall give to the court any information concerning the child that the court may at any time require. An institution or agency receiving a child under this paragraph shall inform the court whenever the status of the child is affected through temporary or permanent release, discharge, or transfer to other custody. An institution to which a child is committed under section 571-11(1) or (2) shall not transfer custody of the child to an institution for the correction of adult offenders, except as authorized in this chapter and under chapter 352.
- (5) The court may order, for any child within its jurisdiction, whatever care or treatment is authorized by law.
- (6) In placing a child under the guardianship or custody of an individual or of a private agency or private institution, the court shall give primary consideration to the welfare of the child.
- (7) In support of any order or decree under section 571-11(1) or (2), the court may require the parents or other persons having the custody of the child, or any other person who has been found by the court to be encouraging, causing, or contributing to the acts or conditions which bring the child within the purview of this chapter and who are parties to the proceeding, to do or to omit doing any acts required or forbidden by law, when the judge deems this requirement necessary for the welfare of the child. If such persons fail to comply with the requirement, the court may proceed against them for contempt of court.
- (8) In support of any order or decree for custody or support, the court may make an order of protection setting forth reasonable conditions of behavior to be observed for a specified time, binding upon both parents or either of them. This order may require either parent to stay away from the home or from the other parent or children, may permit the other to visit the children at stated periods, or may require a parent to abstain from offensive conduct against the children or each other.
- (9) The court may dismiss the petition or otherwise terminate its jurisdiction at any time.
- (10) In any other case of which the court has jurisdiction, the court may make any order or judgment authorized by law.
- (11) The court may order any person adjudicated pursuant to section 571-11(1) to make restitution of money or services to any victim who suffers loss as a result of the child's action, or to render community service.
- (12) The court may order any person adjudicated pursuant to section 571-11(2) to participate in community service.
- (13) The court may order the parents of an adjudicated minor to make restitution of money or services to any victim, person, or party who has incurred a loss or damages as a result of the child's action."

SECTION 7. Section 571D-1, Hawaii Revised Statutes, is amended to read as follows:

"§571D-1 Juvenile justice interagency board. There is established within the department of the attorney general for administrative purposes the juvenile justice interagency board, consisting of nine members which shall include a police chief of one of the counties, the prosecuting attorney of a county, a representative from a private social agency, and two additional members, all appointed by the governor as provided in section 26-34, and the superintendent of education, the public defender, the director of [social services,] corrections, and the senior judge of the first circuit family court as ex officio members. The composition of the board shall include a resident member from each county in the State.

The attorney general shall designate the executive secretary of the board."

SECTION 8. Chapter 601, Hawaii Revised Statutes, is amended as follows:

1. By amending section 601-33 to read:

"[§601-33] Duties. The sheriff and the sheriff's deputies shall be charged with service of process and execution of any order of court. They shall also perform such other functions as the chief justice may direct in furtherance of the performance of the functions of the judiciary, other than the practice of law[.] or the provision of transportation services for defendants who are under the care and custody of the department of corrections for required court appearances. In that connection, upon specific authorization and direction of the chief justice, the sheriff or a deputy sheriff shall have all of the powers of a police officer, including the power of arrest."

2. By amending section 601-51 to read:

"[§601-51] Security personnel, powers. Any person employed by the judiciary as a state law enforcement officer or state security officer upon specific authorization and direction of the judiciary shall have all of the powers of police officers, including the power of arrest as that of law enforcement officers employed by the department of the attorney general under section 28-11.5 provided that such power shall remain in force and effect only while that person is in the actual performance of such person's duties, which duties shall include off-duty employment when such employment is for other state departments or agencies[.] but shall not include the provision of transportation services for defendants who are under the care and custody of the department of corrections for required court appearances."

SECTION 9. Section 843-1, Hawaii Revised Statutes, is amended by amending subsection (a) to read as follows:

"(a) Commencing on July 1, [1985,] 1987, there is established within the [office of the lieutenant governor,] department of corrections, for administrative purposes only, the Hawaii criminal justice commission. This commission shall have its existence terminated, if not renewed by the legislature, on June 30, 1988.

[For a twelve-month period commencing July 1, 1984, and ending on June 30, 1985, the presently existing Hawaii crime commission shall remain in existence as established in the office of the lieutenant governor, for administrative purposes only.]"

SECTION 10. Sections 334-74, 351-11, 355-4, 355-5, 706-604, 706-656, 706-667, 706-670.5, 706-672, and 832-23; and chapters 352 and 353, Hawaii Revised Statutes, are amended by replacing all references to the

"department of social services and housing" or like terms with the "department or corrections" or like terms, and by replacing all references to the "director of social services" or like terms, with the "director of corrections" or like terms.

SECTION 11. (a) All rights, powers, functions, and duties of the department of social services and housing relating to corrections, including the corrections division, intake service center, Hawaii paroling authority, and the criminal injuries compensation commission; of the judiciary relating to the functions of the sheriff's office and judiciary security personnel that relate solely to the transportation of defendants under the care and custody of a correctional facility for required court appearances; and of the office of the lieutenant governor relating to the Hawaii criminal justice commission are transferred to the department of corrections. A cadre of officers and employees, as may be necessary, to be selected by the director of corrections in concurrence with the director of social services, shall be transferred from the general administration of the department of social services and housing to the department of corrections.

All officers and employees whose functions are transferred by this Act shall be transferred with their functions and shall continue to perform their regular duties upon their transfer, subject to the state personnel laws and this Act.

No officer or employee of the State having tenure shall suffer any loss of salary, seniority, prior service credit, vacation, sick leave, or other employee benefit or privilege as a consequence of this Act, and such officer or employee may be transferred or appointed to a civil service position without the necessity of examination; provided that the officer or employee possesses the minimum qualifications for the position to which that officer or employee is transferred or appointed; and provided that subsequent changes in status be made pursuant to applicable civil service and compensation laws.

Any officer or employee of the State who does not have tenure and who may be transferred or appointed to a civil service position as a consequence of this Act shall become a civil service employee without the loss of salary, seniority, prior service credit, vacation, sick leave, or other employee benefits or privileges and without the necessity of examination; provided that such officer or employee possesses the minimum qualifications for the position to which that officer or employee is transferred or appointed.

In the event that an office or position held by an officer or employee having tenure is abolished, the officer or employee shall not thereby be separated from public employment, but shall remain in the employment of the State with the same pay and classification and shall be transferred to some other office or position for which the officer or employee is eligible under the personnel laws of the State as determined by the head of the department or the governor.

(b) All appropriate records, appropriations, equipment, machines, files, supplies, contracts, books, papers, documents, maps, and other personal property heretofore made, used, acquired, or held by the department of social services and housing, and judiciary, relating to functions transferred to the department of corrections shall be transferred with the functions to which they relate; provided that such transfers shall occur no later than July 1, 1988. The proposed full budget for the department of corrections shall be reported to the 1988 session of the legislature twenty days prior to opening day.

SECTION 12. It is the intent of this Act to neither jeopardize the receipt of any federal aid nor impair the obligation of the State or any agency

thereof to the holders of any bond issued by the State or by any such agency, and to the extent, and only to the extent, necessary to effectuate this intent, the governor may modify the strict provisions of this Act, but shall promptly report any such modification with reasons therefor to the legislature at its next session thereafter for review by the legislature.

SECTION 13. There is appropriated out of the general revenues of the State of Hawaii the sum of \$336,880, or so much thereof as may be necessary for fiscal year 1987-1988, and \$184,820, or so much thereof as may be necessary for fiscal year 1988-1989, to carry out the purposes of this Act; provided that of the amounts appropriated, \$16,880 for fiscal year 1987-1988 and \$4,820 for fiscal year 1988-1989, shall be expended for the expenses of the interdisciplinary committee established in Section 15 of this Act.

The sum appropriated shall be expended by the department of corrections.

SECTION 14. All laws and parts of laws heretofore enacted which are in conflict with the provisions of this Act are hereby amended to conform herewith. All acts passed during this regular session of 1987, whether enacted before or after the passage of this Act, shall be amended to conform to this Act, unless such acts specifically provide that this Act is being amended.

SECTION 15. It is the intent of this Act that the juvenile corrections functions be temporarily placed in the department of corrections for a two-year period ending June 30, 1989, during which time an interdisciplinary committee shall study and determine the appropriate placement of the youth corrections programs. The committee shall be composed of the following members:

- (1) One representative each from the office of children and youth, the family court; the Hawaii Youth Services Network, and the John Howard Association of Hawaii to be appointed by the head of each respective agency;
- (2) One representative from the Hawaii youth correctional facility to be appointed by the director of corrections; and
- (3) One representative each from the fields of education, mental health, social work, shelters for runaways, and juvenile justice, to be appointed by the governor.

The committee members shall serve without compensation but shall be reimbursed for all expenses incurred in performing their duties as committee members. The committee shall be placed within the department of corrections for administrative purposes and shall cease to exist upon the submission of its report to the legislature.

The committee shall comprehensively study the juvenile justice system in Hawaii and make recommendations on the appropriate placement of the youth corrections functions in either the department of social services and housing or the department of corrections, or whether a separate department for youthful offenders might be more appropriate. The committee shall also make recommendations for improving the coordination and delivery of programs and services to all youthful offenders, including status offenders. The committee shall submit a report of its findings and recommendations not later than twenty days prior to the convening of the Regular Session of 1989.

SECTION 16. Statutory material to be repealed is bracketed. New statutory material is underscored².

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SECTION 17. This Act shall take effect on July 1, 1987; provided that a one-year transition period shall be established and full implementation of this Act shall occur no later than July 1, 1988. During the transition period, pending the appointment of the director of corrections, the deputy director of the department of social services and housing dealing with the public safety area shall serve as the acting director of corrections. The acting director of corrections shall discharge the duties and functions necessary to establish a department of corrections and shall enjoy the privileges attendant thereto, and the department of social services and housing shall extend its resources, other than funds, to assist the acting director, until the director of corrections is appointed.

(Approved June 29, 1987.)

Notes

1. So in original.
2. Edited pursuant to HRS §23G-16.5.