

ACT 25

S.B. NO. 2-S

A Bill for an Act Relating to Crime.

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

SECTION 1. The legislature finds that rehabilitation programs that educate and prepare persons awaiting trial, after conviction, who are incarcerated or on parole, are critical to the future well-being of the community. In addition, prompt handling of drug cases and more intensive judicial involvement with monitoring will help ensure the effectiveness of the system.

The purpose of this Act is to address the issue of prison overcrowding at a time when budget considerations prevent investment in new prison facilities by:

- (1) Establishing a drug court at the state circuit court level;
- (2) Implementing a comprehensive schedule of alternatives to incarceration that do not undermine public safety; and
- (3) Providing rehabilitative and assistance programs for arrestees and the incarcerated.

PART I: INTERMEDIATE SANCTIONS

SECTION 2. 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- Intermediate sanctions; eligibility; criteria and conditions. (a) The department of public safety shall implement alternative programs that place, control, supervise, and treat selected offenders in lieu of incarceration.

(b) Pretrial detainees may be considered for placement in alternative programs if they:

- (1) Have been admitted to bail and are not charged with a non-probationable class A felony; and
- (2) Have not, within the previous five years, been convicted of a crime involving serious bodily injury or substantial bodily injury as defined by chapter 707.

(c) Sentenced offenders and other committed persons may be considered for placement in alternative programs as a condition of furlough or release, provided that the person is otherwise eligible for or has been granted furlough or release pursuant to section 353-8 or 353-17.

(d) As used in this section, “alternative programs” mean programs which, from time to time, are created and funded by legislative appropriation or federal grant naming the department of public safety or one of its operating agencies as the expending agency and which are intended to provide an alternative to incarceration. Alternative programs may include:

- (1) Home detention, curfew using electronic monitoring and surveillance, or both;
- (2) Supervised release, graduated release, furlough, and structured educational or vocational programs;
- (3) A program of regimental discipline pursuant to section 706-605.5; and
- (4) Similar programs created and designated as alternative programs by the legislature or the director of public safety for inmates who do not pose significant risks to the community.”

SECTION 3. Chapter 353, Hawaii Revised Statutes, is amended by adding a new section to part II to be appropriately designated and to read as follows:

“§353- Intermediate sanctions; eligibility; criteria and conditions. (a) The Hawaii paroling authority shall implement alternative programs that place, control, supervise, and treat selected parolees in lieu of incarceration.

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

(c) As used in this section, “alternative programs” mean programs which, from time to time, are created and funded by legislative appropriation or federal grant naming the Hawaii paroling authority or the department of public safety on behalf of the Hawaii paroling authority as the expending agency and which are intended to provide an alternative to incarceration. Alternative programs may include:

- (1) Home detention, curfew using electronic monitoring and surveillance, or both;
- (2) Intensive supervision, residential supervision, work-furlough, and structured educational or vocational programs;
- (3) Therapeutic residential and nonresidential programs; and
- (4) Similar programs created and designated as alternative programs by the legislature, the chairperson of the Hawaii paroling authority, or the director of public safety for parolees who do not pose significant risks to the community.”

SECTION 4. Chapter 706, Hawaii Revised Statutes, is amended by adding a new section to be appropriately designated and to read as follows:

“§706- Intermediate sanctions; eligibility; criteria and conditions. (1) The judiciary shall implement alternative programs that place, control, supervise, and treat selected defendants in lieu of a sentence of incarceration.

(2) Defendants may be considered for sentencing to alternative programs if they:

- (a) Have not been convicted of a non-probationable class A felony; and
- (b) Have not, within the previous five years, been convicted of a crime involving serious bodily injury or substantial bodily injury as defined by chapter 707.

(3) A defendant may be sentenced by a district, family, or circuit court judge to alternative programs.

(4) As used in this section, “alternative programs” mean programs which, from time to time, are created and funded by legislative appropriation or federal grant naming the judiciary or one of its operating agencies as the expending agency and which are intended to provide an alternative to incarceration. Alternative programs may include:

- (a) House arrest, or curfew using electronic monitoring and surveillance, or both;
- (b) Drug court programs for defendants with assessed alcohol or drug abuse problems, or both;
- (c) Therapeutic residential and non-residential programs;
- (d) A program of regimental discipline pursuant to section 706-605.5; and
- (e) Similar programs created and designated as alternative programs by the legislature or the administrative director of the courts for qualified defendants who do not pose significant risks to the community.”

PART II: DRUG COURT

SECTION 5. The legislature finds that, due to the dramatic increase in substance abuse cases and the resulting increase in the number of detained and

incarcerated individuals with drug abuse problems, alternatives to incarceration and to dealing with the drug-abusing offender must be implemented. The institution of the Hawaii drug court is seen as one element that may be added to Hawaii's criminal justice system that may offer substance abusers an effective means of addressing their abuse problems while being held accountable for their progress in treatment through regular contact with the drug court. The goal of the drug court is to enhance the effectiveness of the criminal justice system and its substance abuse delivery system and treatment through:

- (1) Early intervention and increased diversion from incarceration;
- (2) Individualized assessment of drug problems;
- (3) Increased access to a continuum of drug treatment options, from assessment for appropriate treatment that will include a spectrum of solutions from drug education to residential substance abuse treatment, and after care to increased drug testing by urinalysis; and
- (4) Judicial tracking and increased judicial involvement in monitoring treatment participation with the use of incentives for compliance and graduated sanctions for noncompliance.

The drug court would consist of one of the existing first circuit court judges, to be selected by the chief justice. The activities of the drug court judge will be supported by related case management and auxiliary and support services, treatment, urinalysis, and intensive supervision mechanisms.

Successful intervention by the drug court is expected to have long-term influence upon prison overcrowding, probation and parole workloads, and case flow through the judicial system.

The purpose of this part is to authorize the establishment of temporary positions for the Hawaii drug court.

SECTION 6. The judiciary is authorized to establish, at the stated levels, the following temporary positions for the purpose of implementing section 5 for each fiscal year 1995–1996 and 1996–1997, and to be funded from the appropriation authorized in section 22:

- (1) One full-time equivalent (1.0 FTE) social worker V position (\$36,616);
- (2) Five full-time equivalent (5.0 FTE) social worker IV positions (\$32,548 each); and
- (3) One full-time equivalent (1.0 FTE) circuit court clerk II position (\$28,344).

PART III: INTEGRATED COMMUNITY SANCTIONS PROGRAM

SECTION 7. The legislature finds that alternatives to incarceration that do not undermine public safety include intensive supervision of appropriate probationers that was proven effective as a pilot project in the first circuit court several years ago. The integrated community sanctions program will implement this concept through structured intermediate sanctions established by the probation offices of the circuit courts for nonviolent offenders. Targeted offenders include probation violators, who may not qualify under a drug diversion program, and sentenced felons or misdemeanants who commit nonviolent property offenses. The program will provide community sanctions of house arrest, intensive supervision, and curfew using electronic monitoring devices. To improve surveillance, probation supervision operations will be decentralized, using existing community sites such as rural district court facilities. On Oahu, two teams of two officers each will:

- (1) Be dedicated to a specific geographic area;
- (2) Supervise approximately thirty-five offenders per team; and
- (3) Conduct late evening surveillance as required.

The purpose of this part is to authorize the establishment of temporary positions for the integrated community sanctions program.

SECTION 8. The judiciary is authorized to establish, at the stated levels, the following temporary positions for the purpose of implementing section 7 for each fiscal year 1995–1996 and 1996–1997:

- (1) First circuit:
 - (a) One full-time equivalent (1.0 FTE) social worker V position (\$36,616);
 - (b) Four full-time equivalent (4.0 FTE) social worker IV positions (\$32,544 each); and
 - (c) One full-time equivalent (1.0 FTE) judicial clerk II position (\$22,002);
- (2) Second circuit:
 - (a) One full-time equivalent (1.0 FTE) social worker V position (\$36,616);
 - (b) Two full-time equivalent (2.0 FTE) social worker IV positions (\$32,544 each); and
 - (c) One full-time equivalent (1.0 FTE) judicial clerk II position (\$22,002);
- (3) Third circuit:

Two full-time equivalent (2.0 FTE) social worker IV positions (\$32,544 each); and
- (4) Fifth circuit:

One full-time equivalent (1.0 FTE) social worker IV position (\$32,544).

PART IV: ELECTRONIC MONITORING

SECTION 9. The legislature finds that electronic monitoring (EM) is an effective alternative to incarceration when used to conduct after-hours curfew surveillance or house arrest restriction of pretrial detainees. The department of public safety currently operates seventy EM units statewide through central intake service. Pretrial detainees constitute more than half of the Oahu community correctional center population. It is necessary to increase the number of units to be used as court ordered conditions of pretrial supervised release of bail. Providing seventy additional EM units and the creation of two teams to provide surveillance for these units will enhance this pretrial alternative to incarceration and ensure prompt apprehension upon violation.

The purpose of this part is to authorize the establishment of temporary positions to expand electronic monitoring with surveillance.

SECTION 10. The department of public safety is authorized to establish, at the stated levels, the following temporary positions for the purpose of implementing section 9 for each fiscal year 1995–1996 and 1996–1997, and to be funded from the appropriation authorized in section 23:

- (1) Two full-time equivalent (2.0 FTE) social worker III positions (\$27,000 each);
- (2) Two full-time equivalent (2.0 FTE) deputy sheriff II positions (\$26,000 each); and
- (3) One full-time equivalent (1.0 FTE) clerk position (\$20,000).

PART V: DRUG TREATMENT SERVICES

SECTION 11. The legislature finds that early intervention of drug treatment for nonviolent drug offenders is an essential part of the drug court concept and will divert offenders from jail into residential or appropriate out-patient treatment programs upon initial detention. The department of public safety, the offices of prosecuting attorneys, and the drug court in the first circuit and other courts, as appropriate, may identify the substance abuser after arrest, assess the extent of addiction, determine the level of treatment needed, and refer the individual to a substance abuse program until clinical discharge with approval of the appropriate authority. Failure to successfully complete drug treatment will result in increasing sanctions, including incarceration.

Many pretrial detainees currently qualify for such a program but none are available because of limited resources. The legislature therefore finds it necessary to fund drug treatment programs for offenders diverted from jail on supervised release by the courts and in connection with programs of deferred prosecution that may be established by offices of prosecuting attorneys in the various circuits. It is anticipated that at least forty-eight pretrial offenders per year will be diverted to drug treatment in connection with the first circuit drug court. The department of public safety estimates that forty-eight other offenders in the first year, and ninety-six in the second year of the biennium would be eligible for diversion through deferred prosecution programs.

PART VI: COMMUNITY REINTEGRATION PROGRAMS

SECTION 12. (a) The legislature finds that the primary mission of the State's correctional function is the protection of the public. One way this protection is achieved is through programs that prepare inmates for successful reintegration into the community after their release from incarceration. Without this preparation, most inmates will have great difficulty in establishing meaningful, productive, crime-free lives. Upon entry into prison, approximately sixty per cent of the inmates are functionally illiterate, most have no real vocational skills, and eighty-five per cent have a history of substance abuse. The number of inmates who are sex offenders is growing rapidly.

Unless programs are available to address these issues, these inmates cannot safely be released into the community. The Hawaii paroling authority has found that a large majority of parole violations are attributable to substance abuse. In addition, many sex offenders are not adequately prepared for release into the community because of limited treatment opportunities in prison, and thus must remain incarcerated, contributing to overcrowding.

The legislature therefore finds that correctional programs need to be properly funded to:

- (1) Protect the public;
 - (2) Alleviate overcrowding; and
 - (3) Give inmates the opportunity to successfully return to the community.
- (b) The purpose of this part is to authorize the establishment of temporary positions for:

- (1) Inmate basic education and vocational programs;
- (2) The purchase of services for medically disabled inmates in the sex offender treatment program;
- (3) Personnel costs for surveillance groups in the sex offender treatment program;
- (4) Personnel costs, other current expenses and equipment for the assessment center of the sex offender treatment program; and

- (5) Personnel costs and other current expenses for the substance abuse programs.

SECTION 13. The department of public safety is authorized to establish the following temporary positions for the purpose of implementing section 12 for each fiscal year 1995–1996 and 1996–1997:

- (1) One full-time equivalent (1.0 FTE) clinical psychologist VII position;
- (2) One full-time equivalent (1.0 FTE) clinical psychologist V position;
- (3) Four full-equivalent (4.0 FTE) social worker II positions;
- (4) One full-time equivalent (1.0 FTE) substance abuse program administrator position;
- (5) One full-time equivalent (1.0 FTE) substance abuse clinical supervisor position;
- (6) One full-time equivalent (1.0 FTE) substance abuse counselor position; and
- (7) One full-time equivalent (1.0 FTE) clerk typist position.

PART VII: RESIDENTIAL WORK-FURLOUGH

SECTION 14. The Hawaii paroling authority is limited in program options by the lack of alternatives for a parolee who is employed but who is violating technical conditions of the parolee's parole. Current practice is to return the parolee to custody for up to ninety days, due to high caseloads, rather than providing extensive daily supervision and keeping the parolee out of custody. In this situation, the parolee invariably loses the parolee's job, reducing the chances of successful parole completion.

In fiscal year 1994, approximately thirty per cent or eighty-six technical parole violators could have utilized a structured residential program in lieu of revocation and reincarceration. Many are drug users who must be removed from their current environment to abstain from drugs and enter treatment. This can be accomplished at the residential facility.

The legislature finds it is more practical and financially responsible to place these employed parolees in a residential facility with work release than to return these offenders to prison.

PART VIII: EARLY PAROLE

SECTION 15. With the necessary additional staffing, the Hawaii paroling authority could parole, in addition to the normal predicted parole releases, approximately one hundred sixty inmates who are within one year of completion of their minimum sentence expiration dates and who have a suitable parole plan, and whose conduct while institutionalized has been above average and who are classified minimum or community security. Inmates would be screened by the Hawaii paroling authority and the department of public safety. By providing additional staff and funds for drug testing, electronic monitoring, and treatment, the increased caseload of these parolees should not compromise public safety.

The purpose of this part is to authorize the establishment of temporary positions for the department of public safety to meet its anticipated caseload.

SECTION 16. The department of public safety is authorized to establish the following temporary positions for the purpose of implementing section 15 for each fiscal year 1995–1996 and 1996–1997:

- (1) Two full-time equivalent (2.0 FTE) social worker IV positions (SR 22); and

- (2) One full-time equivalent (1.0 FTE) clerk position (SR 08).

PART IX: SEX OFFENDER AND SUBSTANCE ABUSE SERVICES

SECTION 17. Without continued treatment while on parole, sex offenders will pose a significant danger to the community. Similarly, drug-dependent offenders crave illegal substances and will do almost anything to continue their addiction. Without substance abuse treatment, they will pose a continuing threat to the community. In addition, an estimated eighty per cent (or two hundred twenty-nine) of parole violators who returned to prison are due to drug related activities. Without substance abuse treatment while in the community, drug dependent offenders pose a risk to the community safety and are more likely to fail parole and be incarcerated.

PART X: INCREASED PAROLE OFFICERS

SECTION 18. The Hawaii paroling authority's normal anticipated caseload has grown by an additional three-hundred inmates in recent years, and at this point the authority's resources have reached their effective limit. The Hawaii paroling authority has approximately one thousand seven hundred parolees under its jurisdiction and a total of twenty-six parole officers statewide. Eight parole officers are assigned to specialized caseloads of thirty-five to fifty parolees including sex offenders and mentally ill offenders, leaving an average caseload of eighty to one hundred parolees for other supervising officers. To maintain a credible parole program, with appropriate supervision levels for parolees, and to accommodate the routine parole releases, the authority requires the addition of two parole officers.

The purpose of this part is to establish temporary positions to increase parole staff to adequately meet the current caseload.

SECTION 19. The department of public safety is authorized to establish two temporary full-time equivalent (2.0 FTE) social worker IV positions (SR 22) to serve as parole officers under the Hawaii paroling authority for the purpose of implementing section 18 for each fiscal year 1995-1996 and 1996-1997.

PART XI: KASHBOX PROGRAM

SECTION 20. The legislature finds that the KASHBOX program, a therapeutic community for minimum security inmates with chronic drug abuse problems, has had a high level of success in helping inmates who have been through the program complete their parole. Data collected by the Hawaii paroling authority documents a twenty-five per cent recidivism rate for KASHBOX graduates, compared with sixty per cent for a comparable group of parolees. The KASHBOX program currently services only a small fraction of eligible inmates.

The purpose of this part is to authorize the establishment of temporary positions to expand the KASHBOX program to reach a greater number of inmates.

SECTION 21. The department of public safety is authorized to establish, at the stated levels, the following temporary positions for the purpose of implementing section 20 for each fiscal year 1995-1996 and 1996-1997:

- (1) One full-time equivalent (1.0 FTE) clinical supervisor position (SR 24) (\$36,636);
- (2) Two full-time equivalent (2.0 FTE) substance abuse counselors (SR 22) (\$32,544 each); and
- (3) One full-time equivalent (1.0 FTE) clerk typist II (\$17,712).

PART XII: APPROPRIATIONS

SECTION 22. There is appropriated out of the general revenues of the State of Hawaii the sum of \$612,503, or so much thereof as may be necessary for fiscal year 1995–1996, and the sum of \$612,503, or so much thereof as may be necessary for fiscal year 1996–1997, for staffing, equipment, and other current expenses for the implementation and operation of the drug court.

The sums appropriated shall be expended by the judiciary for the purposes of this Act.

SECTION 23. There is appropriated out of the general revenues of the State of Hawaii the sum of \$281,200, or so much thereof as may be necessary for fiscal year 1995–1996, and the sum of \$281,200, or so much thereof as may be necessary for fiscal year 1996–1997, for staffing, equipment, and other current expenses for the implementation and operation of the electronic monitoring program.

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

SECTION 24.¹ This Act shall take effect on July 1, 1995.

(Approved June 29, 1995.)

Note

1. No ramseyer clause.