

ACT 152

H.B. NO. 2843

A Bill for an Act Relating to Drug Demand Reduction Assessments.

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

SECTION 1. The legislature makes the following findings:

- (1) A growing body of research demonstrates the destructive impact of alcohol and other drug abuse on personal health and health care costs, the spread of communicable disease, educational performance and attainment, work force participation, safety and productivity in the workplace, and financial stability. These indicators of social erosion are in turn related to crime in many obvious but hard to measure ways. Given the recognized relationship between crime and substance abuse and addiction, it is necessary and appropriate to use, adapt, and expand the resources and remedies available within the criminal justice system to address the problem of substance abuse dependency and thereby to help reduce the demand for illicit drugs and the incidence of drug-related crimes.
- (2) Studies, such as the drug use forecasting studies conducted by the National Institute of Justice, reveal that a large percentage of persons arrested for both drug and nondrug offenses (such as thefts, burglaries, robberies, assaults, rapes, and homicides) test positive for recent drug use. Many offenses are committed by adults who are under the influence of a controlled substance or alcohol or are committed in order to raise revenues to support the person's drug habit. Some mind and mood altering drugs, moreover, seem to induce criminal and often violent behavior, reducing the person's inhibitions as well as the person's ability to anticipate future consequences, thereby undermining the deterrent thrust of the criminal law. Some drugs also may reduce an offender's ability to empathize with a potential victim, resulting in episodes of seemingly mindless violence. Finally, some crimes, including crimes of violence, are committed in the normal course of conducting illicit drug businesses and enterprises. These include strong arm robberies and "rip-offs", violent retaliations for these offenses, and efforts to protect markets and "turf" by means of intimidation and terrorism directed against would-be competitors and drug purchasers who patronize competing drug distributors.
- (3) Research has demonstrated that substance abuse and addiction is treatable within the offender population and that appropriate actions by criminal justice professionals can foster the effectiveness of treatment. This research further demonstrates that the effectiveness of substance abuse treatment is directly related to the length of stay in treatment. The threat of criminal justice sanctions, in turn, can be used to motivate offenders to enter treatment and stay in treatment for as long as necessary to effect positive change. To achieve this change, treatment must be of sufficient duration and intensity, must be supported by periodic comprehensive drug testing to maintain program integrity, must be provided by professional staff who have received adequate training and who continue to receive training and adequate supervision, and must provide for the continued collection and analysis of program data to allow for both process and impact evaluation. Moreover, the drug and alcohol treatment programs must be accredited by the department of health and must be appropriate in type, duration, and intensity

based upon the length and level of treatment derived from an alcohol and other drug assessment of each individual's needs, balanced with the public's right to protection.

- (4) Few addicts voluntarily seek help for a substance abuse problem. Many drug dependent persons deny that they have a problem. Consequently, the decision to participate in treatment typically is the result of pressure brought to bear by other persons, including family members, friends, co-workers, employers, medical and health care professionals, school officials, courts, or law enforcement agencies. Since a substantial percentage of referrals for substance abuse treatment come from law enforcement agencies, the law enforcement community acts as a major point of entry to the substance abuse treatment system. It is in the public interest to use the coercive powers of the law enforcement community and their jurisdiction over persons charged with committing crimes to constructively influence substance abusing and addicted offenders and to provide strong incentives for these offenders to accept help and to participate and remain as long as necessary in meaningful treatment and monitoring programs.
- (5) Most addicted offenders who are convicted of serious crimes and who are sentenced to terms of imprisonment will eventually be released back into the community on parole or at the expiration of their sentences. Without proper treatment, an offender is likely to continue to be drug dependent and to commit new offenses, resulting in further injury to victims, loss of property, and the expenditure of scarce resources to identify, apprehend, prosecute, and return the offender to confinement. Under these circumstances, the overriding need to protect the public safety requires that all substance abusing and addicted offenders receive appropriate treatment and monitoring services, based on the individual's need as determined by an alcohol and other drug assessment, either in lieu of or during the course of traditional imprisonment, and continue to receive needed treatment or appropriate aftercare, support, or monitoring services as a condition of parole or other release from confinement.
- (6) Persons charged with repeat offenses who actively abuse or are addicted to a controlled substance or alcohol and who are not undergoing appropriate treatment and monitoring pose a proportionately greater risk of criminal recidivism.
- (7) To ensure uniformity and the best possible use of limited resources, the department of health must develop and enforce accreditation and operational standards for all programs, whether public or private, that provide substance abuse assessment services or treatment services to adults who are repeat offenders who are inmates in correctional centers and facilities.
- (8) For treatment and intervention services to be most effective, alcohol and other drug abusing and addicted offenders must be assured that information provided during the course of treatment and counseling will be kept confidential in accordance with 42 United States Code section 290dd-3 and 42 C.F.R. Part 2, which govern the confidentiality of alcohol and other drug abuse treatment records. Without these protections, an offender in need of alcohol and other drug treatment services may be discouraged from constructively engaging in the treatment process. Preserving the confidentiality of treatment information and records is consistent with the vital goal of holding alcohol and

other drug abusing and addicted offenders fully accountable for their past and future actions.

The purpose of this Act is to establish a substance abuse assessment and treatment program to identify those inmates who are repeat offenders who are inmates in correctional centers and facilities, who actively abuse a controlled substance or alcohol, who are alcohol or drug dependent, or who are otherwise in need of substance abuse treatment and monitoring. It is the intent of this Act to establish cost-effective substance abuse assessment, treatment, and monitoring services; and hold substance abusing repeat offenders accountable for their past and future actions by means of an effective combination of rewards, threats, and swiftly imposed punishments and sanctions designed to take full advantage of the coercive influence of the criminal justice system.

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

“CHAPTER CRIMINAL OFFENDER TREATMENT ACT

§ -1 **Title.** This Act shall be known and may be cited as the “Criminal Offender Treatment Act”.

§ -2 **Definitions.** As used in this chapter unless the context requires otherwise:

“Assessment” means an ongoing process through which a substance abuse professional collaborates with a client and other persons to gather and interpret information necessary for planning treatment and evaluating the client’s progress.

“Assessment program” refers to a not-for-profit corporation, government agency, or other entity accredited by the department of health to provide substance abuse services, or to a substance abuse professional certified pursuant to section 321-193.

“Drug or alcohol dependent” means in a state of physical or psychological dependence, or both, arising from the use of a controlled substance or alcohol on a continuous basis that is characterized by behavioral and other responses, including but not limited to a strong compulsion to take the controlled substance or alcohol on a recurring basis, regardless of consequence, in order to experience its psychotropic effects or to avoid the discomfort of its absence.

“Repeat offender” means any inmate in a state correctional center or facility who meets the requirements of section -3(a).

“Substance abuse or additional treatment” means any type of drug or alcohol treatment ordered by the department of public safety, the Hawaii paroling authority, or the agency responsible for monitoring a person’s compliance with the terms and conditions of parole or other release from a correctional center or facility to address a person’s drug or alcohol dependence or other substance abuse or addiction treatment.

“Substance abuse program” or “treatment program” means a program concerned with education, prevention, or treatment directed toward achieving the prevention of substance abuse, or the social, mental, and physical restoration of substance abusers. The term “program” is synonymous with facility, agency, unit, and organization.

“Test” or “drug test” means a test conducted in a medically safe and appropriate manner to determine the presence or absence of alcohol or controlled substance metabolites, or to determine the recent or historical use of alcohol or a controlled substance by the subject of the test.

§ -3 Mandatory drug testing of repeat offenders. (a) Any inmate who has been convicted of an offense under chapters 329, 329C, 707, 708, 709, 710, 711, or 712, and has one prior conviction under any of these chapters, shall be required to submit to drug testing.

(b) Drug tests shall be administered by the department of public safety, in accordance with drug testing standards or rules adopted by the department of health that ensure fair, accurate, and reliable testing and confirmatory procedures and protect the chain of custody as required by section 329B-2.5(4). The sample or specimen used in the drug test shall be provided by or taken from the inmate in a medically safe and appropriate manner.

(c) The test shall be performed as soon as practicable after conviction and prior to the release of the inmate. If an inmate has not undergone a drug test prior to the time of release, submission to a drug test shall be a condition of the inmate's release pursuant to section -7.

§ -4 Mandatory assessment of offenders. (a) Any inmate who has been convicted of more than one offense under chapters 329, 329C, 707, 708, 709, 710, 711, or 712, and has one prior conviction under any of these chapters, shall be required to undergo an assessment if:

- (1) The inmate refuses to undergo a drug test required under section -3;
- (2) The results of the drug test conducted pursuant to section -3 reveal the presence of a controlled substance, for which the inmate has no lawful prescription, or reveals alcohol abuse or dependency;
- (3) The inmate requests an assessment;
- (4) The inmate admits to the unlawful use of a controlled substance within the year preceding the conviction for the present charge or admits to alcohol abuse or alcoholism;
- (5) The inmate has been granted a conditional discharge within the past five years pursuant to section 712-1255 or any similar or predecessor law of this State, any other state, or federal law;
- (6) The inmate has been sentenced within the past five years to probation or treatment during incarceration pursuant to this chapter or any similar or predecessor law of this State, any other state, or federal law; or
- (7) The present or pending charge involved the use or possession of a controlled substance or alcohol.

(b) Notwithstanding the requirements of subsection (a), the department of public safety or the agency responsible for monitoring a person's compliance with the terms and conditions of parole or other release from a correctional center or facility may order the person to undergo an assessment if the department or agency has reason to believe that the person is drug or alcohol dependent or would otherwise benefit from an assessment.

(c) An inmate confined in a state correctional center or facility shall undergo an unannounced prerelease assessment before receiving a grant of parole or other release from the correctional center or facility if:

- (1) The inmate at any time was ordered to undergo an assessment pursuant to this chapter;
- (2) The inmate would have been statutorily required to undergo an assessment pursuant to this chapter had this chapter been in effect at the time the inmate was convicted for the offense for which the inmate presently is serving a term of incarceration;
- (3) The inmate at any time during the inmate's incarceration committed an institutional infraction or violation that involved the use or possession of a controlled substance or alcohol; or

- (4) The department of public safety or the agency responsible for monitoring the inmate's compliance with the terms and conditions of parole or other release from a correctional center or facility has reason to believe that the inmate is drug or alcohol dependent or would otherwise benefit from substance abuse or addiction treatment or related support services.

(d) An assessment required pursuant to subsection (c) shall occur within sixty days of the inmate's scheduled parole or other release from a correctional center or facility.

(e) Any assessment under this chapter shall be conducted by a substance abuse professional certified pursuant to section 321-193 or an assessment program in accordance with the standards, procedures, and alcohol and other drug diagnostic criteria designated or established by the department of health to determine whether and to what extent a person is drug or alcohol dependent and to provide the most cost-beneficial use of available resources.

§ -5 Drug test results or assessment; confidentiality of. (a) Unless otherwise ordered by a court, the drug test results and assessment results of an inmate, parolee, or other person released from a correctional center or facility shall be provided as soon as practicable to the inmate, parolee, or other person who submitted to the test or assessment, the department of public safety or the agency responsible for monitoring the parolee's or other person's compliance with the terms and conditions of parole or other release from a correctional center or facility, as applicable, and the assessment program or treatment program, as applicable.

(b) The assessment shall include:

- (1) A clinical summary based on information gained through the assessment;
- (2) A diagnosis supported by the clinical summary; and
- (3) A recommendation for level of substance abuse treatment, supported by the clinical summary.

(c) Anyone receiving drug test results or assessment results under subsection (a) shall keep that information confidential in accordance with the requirements of 42 United States Code section 290dd-3.

§ -6 Use of drug test or assessment results. (a) Except as provided by law, the results of an inmate's drug test required or ordered under this chapter shall be used only to determine:

- (1) Whether the department of public safety shall order treatment or an assessment;
- (2) Appropriate conditions of parole or other release from a correctional center or facility; or
- (3) An appropriate sanction for violation of a term or condition of the person's participation in a treatment program imposed pursuant to section -9 or any other law.

(b) Except as provided by law, an assessment shall be used only for the purposes listed in subsection (a)(2) or (a)(3) and to provide background information about an inmate to any person or agency conducting a prerelease assessment pursuant to section -4.

(c) Except as provided in this chapter, any information obtained as a result of an assessment program or a treatment program, including positive drug tests, shall be kept confidential in accordance with the requirements of 42 United States Code section 290dd-3.

§ -7 Conditions of parole or other release from a correctional center or facility. (a) If an inmate ordered pursuant to this chapter to participate in a

treatment program is granted parole or other release from a correctional center or facility, the inmate shall agree as a condition of parole or other release to the following terms:

- (1) Submit to subsequent unannounced, random, periodic drug tests to be performed by the agency responsible for monitoring the inmate's compliance with the terms and conditions of parole or other release from a correctional center or facility;
 - (2) Undergo an assessment as required by section -4 and cooperate fully with the assessment program;
 - (3) Participate in a treatment program and cooperate fully with the treatment program;
 - (4) Fulfill satisfactorily any other terms and conditions ordered by the agency responsible for monitoring the inmate's compliance with the terms and conditions of parole or other release from a correctional center or facility, including but not limited to:
 - (A) Periodic telephone contact or office visits to a designated person or agency;
 - (B) Periodic unannounced visits by a designated person or agency to the inmate's home or place of commitment;
 - (C) Curfew or restricted travel and associations; and
 - (D) Electronic monitoring.
 - (5) Cooperate fully with the agency responsible for monitoring the inmate's compliance with the terms and conditions of parole or other release from a correctional center or facility; and
 - (6) Pay drug testing and assessment fees in accordance with section -10.
- (b) The inmate shall acknowledge, as a condition of parole or other release from a correctional center or facility, that failure to comply with the terms set forth in subsection (a) may result in the modification of the conditions of parole or other release by the agency responsible for monitoring the inmate's compliance.
- (c) Nothing in this chapter shall preclude a person from petitioning the agency responsible for monitoring the person's compliance with the terms and conditions of parole or other release from a correctional center or facility to modify the terms and conditions of the person's parole or other release.

§ -8 Report on progress in treatment programs and compliance with conditions. (a) If a person has been ordered to participate in a treatment program, the designated treatment program shall report periodically on the person's progress in the treatment program to the agency responsible for monitoring the person's compliance with the terms and conditions of parole or other release from a correctional center or facility.

(b) A designated treatment program shall promptly notify the agency responsible for monitoring the person's compliance with the terms and conditions of parole or other release from a correctional center or facility if the person:

- (1) Fails to comply with program rules and treatment expectations; or
- (2) Refuses to engage constructively in the treatment process; or
- (3) Terminates participation in the treatment program.

Upon this notification, the agency responsible for monitoring the person's compliance shall promptly report the person's actions to the appropriate authority.

§ -9 Sanctions. Upon a positive drug test or any other substantive violation of any term or condition of a person's participation in a treatment program ordered pursuant to this chapter, the appropriate authority shall immediately impose such sanction or combination of sanctions as may be appropriate. If the appropriate

authority elects not to impose a sanction, the appropriate authority shall make a written finding setting forth the reasons for its decision.

§ -10 Drug testing or assessment fees. (a) Except as provided in subsection (b), the agency responsible for monitoring a person's compliance with the terms and conditions of parole or other release from a correctional center or facility shall impose upon the person reasonable fees to cover the cost of:

- (1) Any drug test of the person required or ordered under this chapter; and
- (2) Any assessment of the person required or ordered under this chapter.

The fees shall not be less than the actual and administrative costs of a drug test or assessment. The fees may be deducted from any income a person has received as a result of labor performed in a correctional center or facility or any type of work release program.

(b) Upon a finding of indigence, the agency responsible for monitoring a person's compliance with the terms and conditions of parole or other release from a correctional center or facility shall require the person to pay as much of the fee as is consistent with the person's ability to pay.

(c) All fees collected pursuant to subsection (a)(1) shall be forwarded to the agency responsible for monitoring the person's compliance with the terms and conditions of parole or other release from a correctional center or facility for payment of costs associated with the agency's drug testing program.

(d) All fees collected pursuant to subsection (a)(2) shall be forwarded to the assessment program for payment of costs associated with the provision of assessments.

§ -11 Escape from residential treatment facility. A person placed into a residential treatment facility or program pursuant to this chapter shall be deemed to be subject to official detention for the purposes of a criminal prosecution for violation of section 710-1020 or 710-1021.

§ -12 Satisfactory progress in treatment program as mitigating factor. A person's satisfactory progress in a treatment program as determined by the treatment program's report shall be considered a mitigating factor and evidence of the person's amenability to treatment for purposes of determining the terms and conditions of parole or other release from a correctional center or facility.

§ -13 Reporting and implementation. (a) Every assessment program, treatment program, correctional center or facility, and parole agency that provides services pursuant to this chapter or that otherwise supervises a person or issues an order pursuant to this chapter shall keep case-specific records and aggregate data and statistics as may be required by the department of health.

(b) The department of public safety, in conjunction with the department of health, shall report on an annual basis to the legislature and to the governor, its findings concerning the need for and implementation of the various provisions of this chapter. The report shall include a synopsis of information or data necessary to determine the impact, utility, and cost-benefits of the provisions of this chapter.

(c) The department of public safety, in conjunction with the department of health, shall establish an advisory board that shall be comprised of judges, prosecutors, defense attorneys, adult probation officials, parole officials, correctional officials, representatives of assessment programs and treatment programs, and individuals working in licensed alcohol and other drug abuse treatment facilities who are past consumers of treatment services. The advisory board shall meet periodically to discuss the provisions, implementation, and evaluation of this chapter, and to make recommendations to the department of health.

(d) Except as provided in this chapter, all data, information, or records kept or compiled pursuant to this section shall be deemed to be government records for the purposes of chapter 92F.

§ -14 **Rules.** The department of public safety shall adopt rules in accordance with chapter 91, and shall develop and periodically review and revise guidelines, directives, standards, and protocols and shall take other actions as are necessary and appropriate, to effectuate the purposes of this chapter.

§ -15 **Accreditation and standards.** All treatment programs and assessment programs providing services pursuant to this chapter shall be accredited by the department of health. In addition, the department of health shall designate accredited treatment programs and assessment programs that have special skills in providing treatment services and assessment services to persons involved in or referred from the criminal justice system. The department of health shall develop program standards to ensure the provision of the full continuum of care for persons ordered to participate in a treatment program pursuant to this chapter. The standards shall address, but need not be limited to, the following:

- (1) Defining the continuum of care;
- (2) Matching persons to appropriate treatment programs; and
- (3) Recruiting and hiring practices representative of the population to be treated, including individuals in recovery from alcohol and other drug abuse and addiction.

§ -16 **Funding sources.** (a) The department of public safety, with the assistance of the department of health, may pursue all available funding through federal programs and private sources. Contingent upon the receipt of sufficient funds, the department of public safety may implement the assessment and treatment services mandated pursuant to this chapter. If at any time funds are not available, the department may not be required to provide these services. In addition, the department of public safety, in conjunction with the department of health, may pursue all available federal matching funds through Medicaid for nonhospital residential alcohol and other drug treatment services from the United States Health Care Financing Administration.

(b) Where the person to whom assessment services or treatment services are provided pursuant to this chapter is a member of a health maintenance organization or otherwise covered by any contract or program for health insurance, every reasonable effort shall be made to ensure that the cost of assessment services and treatment services are defrayed by the health maintenance organization or insurer. Notwithstanding any other law to the contrary, where a health maintenance organization, insurer, or managed care contractor disputes the treatment recommendation accepted by the appropriate authority pursuant to this chapter, the treatment recommendation shall prevail and shall be deemed to be reasonable and appropriate.

§ -17 **Immunity from liability.** (a) Any accredited assessment program or treatment program or substance abuse professional certified pursuant to section 321-193 that, in good faith, provides services pursuant to this chapter shall not be liable in any civil action for damages as a result of any acts or omissions in providing assessment services or treatment services; provided the skill and care given is that ordinarily required and exercised by other persons in the profession. The grant of immunity provided for in this subsection also shall extend to all employees and administrative personnel of the accredited program.

(b) Any qualified person who withdraws or otherwise obtains, in a medically accepted manner, a specimen of breath, blood, urine, or other bodily substance

pursuant to this chapter shall not be liable in any civil action for damages for so acting; provided that the skill and care exercised is that ordinarily required and exercised by similar programs or other persons in the profession.

§ -18 **Statutory construction.** The provisions of this chapter shall be liberally construed to effectuate its remedial and rehabilitative purposes.”

SECTION 3. Act 205, Session Laws of Hawaii 1995, as amended by Act 7, Session Laws of Hawaii 1996, is amended by amending section 4 to read as follows:

“SECTION 4. This Act shall take effect upon its approval and shall be repealed on [June 30, 1998.] June 30, 2001.”

SECTION 4. If any provision of this Act or its application to any person or circumstance is held invalid, the invalidity does not affect other provisions or applications of this chapter which can be given effect without the invalid provisions or application, and to this end the provisions of this chapter are severable.

SECTION 5. If any part of this Act is found to be in conflict with federal requirements that are a prescribed condition for the allocation of federal funds to the State, the conflicting part of this Act is inoperative solely to the extent of the conflict and with respect to the agencies directly affected, and this finding does not affect the operation of the remainder of this Act in its application to the agencies concerned. The rules under this Act shall meet federal requirements that are a necessary condition to the receipt of federal funds by the State.

SECTION 6. Statutory material to be repealed is bracketed. New statutory material is underscored.

SECTION 7. This Act shall take effect upon its approval; provided that section 3 shall take effect on June 29, 1998.

(Approved July 7, 1998.)