

**ACT 139**

S.B. NO. 2776

A Bill for an Act Relating to Public Safety.

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

**PART I**

SECTION 1. In June 2011, the governor, chief justice, senate president, house speaker, and director of public safety joined together to begin developing a data-driven justice reinvestment strategy to bring out-of-state prisoners back to Hawaii, reduce spending on corrections, and reinvest savings generated in strategies that would reduce recidivism and crime and increase public safety. To this end, they sought assistance from the Bureau of Justice Assistance, a division of the United States Department of Justice, and the Pew Center on the States. The state leaders established a bipartisan, inter-branch justice reinvestment working group comprising leading state and local officials to receive intensive technical

assistance from the Council of State Governments Justice Center. The Council of State Governments Justice Center assisted the working group in analyzing data from every aspect of Hawaii's criminal justice and corrections systems.

The analysis revealed that crime and victimization rates have declined, as have arrests and felony convictions for violent and property crimes. However, the population under probation supervision and incarceration has not declined, and in some cases has increased. From fiscal year 2000 to fiscal year 2011, the State's prison and jail population grew eighteen per cent, from 5,118 inmates to 6,043 inmates. Expenditures for the corrections division of the department of public safety increased seventy per cent from \$112,000,000 in fiscal year 2000 to \$190,000,000 in fiscal year 2011. Approximately one-third of Hawaii's incarcerated population is housed in out-of-state facilities. The cost of housing offenders out-of-state was \$45,000,000 in fiscal year 2011.

The analysis of the data from Hawaii's criminal justice and corrections systems identified three areas for improvement: pretrial process, parole, and payment of restitution. This Act establishes a statutory structure to improve the criminal justice system, relying on the department of public safety, Hawaii paroling authority, and adult probation services to effectively implement changes to policies and practices.

The implementation of these changes to address the target areas is expected to gradually reduce the current incarcerated population and generate savings of approximately five hundred beds and \$9,000,000 by the end of fiscal year 2013, eight hundred fifty beds and \$19,000,000 in fiscal year 2014, and one thousand fifty beds and \$26,000,000 in fiscal year 2015. Realizing these savings will require initial and continued reinvestment in expanding and strengthening victim services, notification, and restitution collection; reentry and community-based treatment programs for pre-trial, probation, and parole populations; pretrial and risk assessments; probation and parole officers; and research and planning staff in the department of public safety.

This Act will improve the State's criminal justice system and increase public safety by focusing on incarceration, supervision, and treatment in a manner that most efficiently addresses the recidivism rate, thereby increasing public safety.

The purpose of this Act is to address the areas of pretrial process, parole, and payment of restitution to reduce costly inefficiencies, hold offenders more accountable, and reinvest savings in more effective public safety strategies.

## PART II

**SECTION 2.** The pretrial population has increased due to longer lengths of stay. The purpose of this part is to require that an objective assessment be conducted within the first three working days of a person's commitment to a community correctional center to allow the courts to more quickly exercise discretion in determining whether to release a pre-trial offender.

**SECTION 3.** Section 353-10, Hawaii Revised Statutes, is amended to read as follows:

**“§353-10 Reentry intake service centers.** (a) There shall be within the department of public safety, a reentry intake service center for adults in each of the counties[-] to screen, evaluate, and classify the admission of persons to community correctional centers and to provide for the successful reentry of persons back into the community. 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 public safety may appoint full-time or part-time professional and clerical staff or contract for professional services to carry out the duties of the centers as identified in this section.

- (b) The centers shall:
- (1) Provide orientation, guidance, and technical services;
  - (2) Provide social-medical-psychiatric-psychological diagnostic evaluation;
  - (3) ~~Provide~~ Conduct internal pretrial risk 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;] within three working days of admission to a community correctional center which shall then be provided to the court for its consideration; provided that this paragraph shall not apply to persons subject to county or state detainers, holds, or persons detained without bail, persons detained for probation violation, persons facing revocation of bail or supervised release, and persons who have had a pretrial risk assessment completed prior to admission to a community correctional center. For purposes of this paragraph, "pretrial risk assessment" means an objective, research-based, validated assessment tool that measures a defendant's risk of flight and risk of criminal conduct while on pretrial release pending adjudication;
  - (4) Assist in the conduct of presentence assessments on adult offenders and the preparation of presentence reports when requested by the courts;
- [4] (5) Provide correctional prescription program planning and security classification;
- [5] (6) Provide ~~such~~ other personal and correctional services as needed for both detained and committed persons;
- [6] (7) Monitor and record the progress of persons assigned to correctional facilities who undergo further treatment or who participate in prescribed correctional programs;
- [7] (8) Ensure that the present and future reentry needs of persons committed to correctional facilities are being evaluated and met in an effective and appropriate manner;
- [8] (9) Provide additional reentry services to include working closely and collaborating with the furlough programs in each county that are currently managed by the department's institutions division;
- [9] (10) Work closely and collaborate with the Hawaii paroling authority; and
- [10] (11) Work closely and collaborate with the corrections program services division."

### PART III

SECTION 4. The number of prisoners denied parole has increased. The purpose of this part is to: increase the number of members of the Hawaii paroling authority; require the Hawaii paroling authority to use an objective risk assessment to determine the programs that offenders shall be required to complete prior to release in order to focus resources on the offenders most likely to benefit from programming and supervision; and reduce recidivism by using swift and certain, yet less costly and severe, responses to parole condition violations.

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SECTION 5. Section 353-61, Hawaii Revised Statutes, is amended to read as follows:

**“§353-61 Hawaii paroling authority; appointment; tenure; qualifications.** (a) Members of the paroling authority shall be nominated by a panel composed of the chief justice of the Hawaii supreme court, the director, the president of the ~~[bar association of Hawaii,]~~ Hawaii State Bar Association, a representative designated by the head of the Interfaith Alliance Hawaii, 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 chairperson or as a member, for each vacancy. The requirement for nomination by the panel established under this section shall only apply to a nominee’s nomination by the governor to an initial term on the paroling authority and not to any subsequent consecutive term of a sitting paroling authority member or chairperson whose initial appointment to office was made pursuant to a nomination by the panel.

(b) 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]~~ five members, one of whom shall be designated chairperson. 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 6. Section 353-63, Hawaii Revised Statutes, is amended to read as follows:

**“§353-63 Service of Hawaii paroling authority members; compensation; expenses.** The chairperson of the Hawaii paroling authority shall serve on a full-time basis. The other ~~[two]~~ four members shall serve on a part-time basis. Effective July 1, ~~[2005,]~~ 2012, the chairperson of the Hawaii paroling authority shall be paid a salary set at eighty-seven per cent of the salary of the director of public safety. The compensation of each of the part-time members shall be eighty per cent of the hourly wage paid the chairperson. For each hour engaged in the official duties of the authority, each part-time member of the authority shall be paid an hourly wage at the percentage rate specified in this section based on the hourly wage paid the chairperson; provided that compensation shall not exceed eighty per cent of the total regular working hours in a month; provided further that part-time members shall not be entitled to any vacation, sick leave, or other benefits except as provided in this section. All paroling authority members shall receive their necessary expenses for travel and incidentals ~~[which]~~ that shall be paid from appropriations provided the authority for such purposes, on vouchers approved by the director of public safety.”

SECTION 7. Section 353-66, Hawaii Revised Statutes, is amended by amending subsection (e) to read as follows:

“(e) Any paroled prisoner retaken and reimprisoned as provided in this chapter shall be confined according to the paroled prisoner’s sentence for that portion of the paroled prisoner’s term remaining unserved at time of parole, but successive paroles may, in the discretion of the paroling authority,

be granted to the prisoner during the life and in respect of the sentence. If the paroled prisoner is retaken and reimprisoned for violating a condition of parole but has not:

- (1) Been charged with a new felony offense or a new misdemeanor of-fense under chapter 707 or section 709-906;
- (2) Absconded or left the State without permission from the paroling authority;
- (3) Violated conditions applicable to sex offenders, such as registering as a sex offender or conditions related to proximity to specified loca-tions or persons; or
- (4) Been previously reimprisoned for violating the conditions of parole on the current offense,

the paroled prisoner shall be confined for no more than six months or for that portion of the paroled prisoner's term remaining unserved at the time of parole, whichever is shorter, so long as the paroling authority has approved a parole plan as set forth under section 706-670(3) and (4). The minimum term of impris-onment shall be as determined by the court or the paroling authority, as the case may be. The prisoner shall be given credit for time served in custody pending a hearing on revocation of parole as it relates to the six-month parole revocation. No prisoner shall be incarcerated beyond the expiration of the prisoner's maxi-mum term of imprisonment."

SECTION 8. Section 706-670, Hawaii Revised Statutes, is amended by amending subsection (1) to read as follows:

"(1) Parole hearing. A person sentenced to an indeterminate term of imprisonment shall receive an initial parole hearing at least one month before the expiration of the minimum term of imprisonment determined by the Hawaii paroling authority pursuant to section 706-669. If the person has been sentenced to multiple terms of imprisonment, the parole hearing shall not be required until at least one month before the expiration of the minimum term that expires last in time. A validated risk assessment shall be used to determine the person's risk of re-offense and suitability for community supervision. For purposes of this subsection, "validated risk assessment" means an actuarial tool to determine a person's likelihood of engaging in future criminal behavior. The department of public safety shall select a research-based risk assessment tool and shall validate the accuracy of the risk assessment tool at least every five years in consultation with the paroling authority. Assessments shall be performed by department of public safety staff who are trained in the use of the risk assessment tool. Except for good cause shown to the paroling authority, a person who is assessed as low risk for re-offending shall be granted parole upon completing the minimum sen-tence, unless the person:

- (a) Is found to have an extensive criminal history record that is indica-tive of a likelihood of future criminal behavior in spite of the find-ing by the risk assessment by the paroling authority;
- (b) Is found to have committed misconduct while in prison that is equiv-alent to a misdemeanor or felony crime within thirty-six months of the expiration of the minimum term of imprisonment;
- (c) Has any pending felony charges in the State;
- (d) Is incarcerated for a sexual offense under part V of chapter 707 or child abuse under part VI of chapter 707; or
- (e) Does not have a parole plan as set forth under section 706-670(3) and (4), as approved by, and at the discretion of, the paroling authority.

If parole is not granted at [~~that time,~~] the initial parole hearing, additional hear-ings shall be held at twelve-month intervals or less until parole is granted or

the maximum period of imprisonment expires. The State shall have the right to be represented at the initial parole hearing and all subsequent parole hearings by the prosecuting attorney, who may present written testimony and make oral comments~~[-, and the]~~. The authority shall consider the testimony and comments in reaching its decision. The authority shall notify the appropriate prosecuting attorney of the hearing at the time the prisoner is given notice of the hearing.”

PART IV

SECTION 9. The purpose of this part is to ensure accountability for victims and offenders by improving the collection of restitution by the department of public safety and ensuring that all felony offenders are supervised for a minimum period of time after their release from incarceration.

SECTION 10. Section 353-22.6, Hawaii Revised Statutes, is amended to read as follows:

“**§353-22.6 Victim restitution.** The director of public safety shall enforce victim restitution orders against all moneys earned by the [prisoner] inmate or deposited or credited to the inmate’s individual account while incarcerated. The amount deducted ~~[and paid once annually to the victim]~~ shall be ~~[ten] twenty-five~~ per cent of the ~~[prisoner’s annual earnings.] total of all moneys earned, new deposits, and credits to the inmate’s individual account.~~ The moneys intended for victim restitution shall be deducted monthly and paid to the victim once the amount reaches \$25, or annually, whichever is sooner. This section shall not apply to moneys earned on work furlough pursuant to section 353-17.”

SECTION 11. Section 353-69, Hawaii Revised Statutes, is amended to read as follows:

“**§353-69 Parole when.** ~~[No]~~ Except as provided in section 706-670, no parole shall be granted unless it appears to the Hawaii paroling authority that there is a reasonable probability that the prisoner concerned will live and remain at liberty without violating the law and that the prisoner’s release is not incompatible with the welfare and safety of society.”

SECTION 12. Section 706-670, Hawaii Revised Statutes, is amended by amending subsection (3) to read as follows:

“(3) Prisoner’s plan and participation. Each prisoner shall be given reasonable notice of the prisoner’s parole hearing and shall prepare a parole plan, setting forth the manner of life the prisoner intends to lead if released on parole, including specific information as to where and with whom the prisoner will reside ~~[and], a phone contact where the prisoner can be reached, and~~ what occupation or employment the prisoner will follow~~[-], if any.~~ The prisoner shall be paroled in the county where the prisoner had a permanent residence or occupation or employment prior to the prisoner’s incarceration, unless the prisoner will: reside in a county in which the population exceeds eight-hundred thousand persons; reside in a county in the State in which the committed person has the greatest family or community support, opportunities for employment, job training, education, treatment, and other social services, as determined by the Hawaii paroling authority; or be released for immediate departure from the State. The institutional parole staff shall render reasonable aid to the prisoner in the preparation of the prisoner’s plan and in securing information for submission to the authority. In addition, the prisoner shall:

- (a) Be permitted to consult with any persons whose assistance the prisoner reasonably desires, including the prisoner's own legal counsel, in preparing for a hearing before the authority;
- (b) Be permitted to be represented and assisted by counsel at the hearing;
- (c) Have counsel appointed to represent and assist the prisoner if the prisoner so requests and cannot afford to retain counsel; and
- (d) Be informed of the prisoner's rights as set forth in this subsection."

## PART V

SECTION 13. Statutory material to be repealed is bracketed and stricken. New statutory material is underscored.

SECTION 14. This Act shall take effect on July 1, 2012; provided that:

- (1) Section 3 shall take effect on January 1, 2013;
- (2) Section 7 shall take effect on July 1, 2012, for any individual on parole supervision on or after July 1, 2012;
- (3) Section 8 shall take effect on July 1, 2012, and shall be applicable to individuals committing an offense on or after that date; and
- (4) Sections 3, 7, 8, 10, and 11 shall be repealed on July 1, 2018, and sections 353-10, 353-66, 706-670(1), 353-22.6, and 353-69, Hawaii Revised Statutes, shall be reenacted in the form on which it read on June 30, 2018.

(Approved June 20, 2012.)