

ACT 217

H.B. NO. 2391

A Bill for an Act Relating to the Release of Certain Misdemeanants.

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

SECTION 1. Chapter 353, Hawaii Revised Statutes, is amended by adding two new sections to be appropriately designated and to read as follows:

“§353-A Release of misdemeanants to prevent overcrowding. (a) Notwithstanding chapter 804 and any other law to the contrary and except as provided in subsection (b), the director may order the release of a misdemeanant on recognizance to prevent overcrowding when a community correctional center has reached capacity, as determined by the director. The director shall consider the circumstances and nature of the misdemeanant’s charge or offense prior to ordering a release pursuant to this section. The director’s order shall supersede and have the same force and effect as an order entered by a court pursuant to chapter 804. For purposes of this section and section 353-B, “misdemeanant” means a person incarcerated at a community correctional center who has been charged with a petty misdemeanor or misdemeanor, or an incarcerated person who has been sentenced pursuant to section 706-663.

(b) No person who is incarcerated under any of the following circumstances shall be eligible for release pursuant to this section:

- (1) The person has been denied bail or whose bail has been set at more than \$5,000 pursuant to chapter 804;
- (2) The person is charged with or convicted of or is on probation or parole for a serious crime, as defined in section 804-3;
- (3) The person has been arrested or convicted for abuse of family or household members, as defined in section 709-906; or
- (4) Other than the offense for which release is contemplated under this section, the person has been previously convicted of any offense, as defined in title 37, that involves injury or threat of injury to the person of another, including but not limited to sexual harassment in the fourth degree, harassment by stalking, violation of an order of protection, or violation of a temporary restraining order.

(c) The authority to release a misdemeanant pursuant to this section is granted solely for the purpose of managing the population of the community correctional centers. Nothing in this section shall be construed as granting any person the right to be released. An order releasing a misdemeanant pursuant to this section shall not operate to dismiss or otherwise terminate any charges then pending against the misdemeanant.

(d) The director shall notify the court where the case is assigned and the prosecuting attorney of the release of any misdemeanant pursuant to this section not later than forty-eight hours prior to the time of the actual release.

(e) The State or any of its officers and employees shall not be subject to any civil liability or penalty nor to any criminal prosecution for any error in judgment or discretion made in good faith and upon reasonable grounds in any action taken or omitted by the State or any of its officers and employees acting in their official capacity pursuant to this section.

(f) The director shall adopt policies and procedures for the release of misdemeanants pursuant to this section.

§353-B Terms and conditions of release; violations; sanctions. (a) A misdemeanant released pursuant to section 353-A shall be subject to the conditions stated in section 804-7.4. In addition, the director may impose any of the conditions that a court is authorized to impose pursuant to section 804-7.1 and shall impose any conditions contained in any court order superseded by the director's order.

(b) Intentional violations of the conditions of release shall be disposed of as provided in sections 804-7.2 and 804-7.3."

SECTION 2. Section 706-663, Hawaii Revised Statutes, is amended to read as follows:

"§706-663 Sentence of imprisonment for misdemeanor and petty misdemeanor. After consideration of the factors set forth in sections 706-606 and 706-621, the court may sentence a person who has been convicted of a misdemeanor or a petty misdemeanor to imprisonment for a definite term to be fixed by the court and not to exceed one year in the case of a misdemeanor or thirty days in the case of a petty misdemeanor[-], subject to earlier release pursuant to section 353-A."

SECTION 3. The director of public safety shall report to the legislature no later than twenty days prior to the convening of the regular sessions of 2018, 2019, and 2020 with respect to the implementation of this Act. The report shall include but not be limited to:

- (1) Detailed information on the number of incarcerated misdemeanants released pursuant to this Act;
- (2) The guidelines and criteria used by the director of public safety in deciding which incarcerated misdemeanants to release pursuant to this Act;
- (3) Any information regarding post-release offenses committed or allegedly committed by any misdemeanants released pursuant to this Act;
- (4) Any known incidents of interactions between released misdemeanants pursuant to this Act and law enforcement agencies due to alleged criminal behavior; and
- (5) Any other information the legislature deems relevant and requests from the director of public safety to determine whether release of certain misdemeanants is in the best interests of the State.

SECTION 4. This Act shall apply only to persons charged with offenses subject to sentencing in section 706-663, Hawaii Revised Statutes, on or after the effective date of this Act.

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

SECTION 6. In codifying the new sections added by section 1 of this Act, the revisor of statutes shall substitute appropriate section numbers for the letters used in designating the new sections in this Act.

SECTION 7. Statutory material to be repealed is bracketed and stricken. New statutory material is underscored.¹

SECTION 8. This Act shall take effect on July 1, 2016, and shall be repealed on July 1, 2020; provided that section 706-663, Hawaii Revised Statutes, shall be reenacted in the form in which it read on the day prior to the effective date of this Act.

(Approved July 6, 2016.)

Note

1. Edited pursuant to HRS §23G-16.5.