

SB 2720

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STATE OF HAWAII
DEPARTMENT OF HUMAN SERVICES
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February 11, 2010

TO: The Honorable Suzanne Chun Oakland, Chair
Senate Committee on Human Services

The Honorable Will Espero, Chair
Senate Committee on Public Safety and Military Affairs

FROM: David Hipp, Executive Director

**SUBJECT: SENATE BILL No. 2720, RELATING TO WARRANTS ISSUED BY THE
EXECUTIVE DIRECTOR OF THE OFFICE OF YOUTH SERVICES**

Hearing: Thursday, February 11, 2010; 1:15 pm
State Capitol, Conference Room 016

The Office of Youth Service (OYS) strongly supports this Administration-sponsored proposal, which authorizes the Office of Youth Services Executive Director or designee to issue warrants for the arrest of juvenile parole violators. We do, though, respectfully recommend some amendments as a result of discussions with the Honolulu Department of the Prosecuting Attorney and the Judiciary.

Wards committed to the Hawaii Youth Correctional Facility may be released on parole as part of their transition from incarceration to the community. Currently, when a youth violates conditions of parole the Youth Facility Administrator issues a letter of detention to the county police departments. Police officers have stated that unless a paroled ward has committed a new status or criminal offense, the letter of detention alone is not sufficient to retake the ward into custody. By authorizing the Office of Youth Services Executive Director or designee to issue warrants for the arrest of parole violators, police will be able to effect an arrest subject to the warrant and return the ward to custody.

In addition to parole, wards may be furloughed for short periods of time as part of the reintegration process, such as a 24-hour visit with family. Such youth are still considered to be incarcerated and, should they fail to return from furlough in a specified period of time, are subject to

The Honorable Suzanne Chun Oakland
The Honorable Will Espero
February 11, 2010
Page 2

arrest for absconding from furlough and may be charged with escape. Youth who escape from the facility buildings and grounds are also subject to arrest and may be charged with escape.

Since the introduction of Senate Bill No. 2720, OYS has been in discussion with the Honolulu prosecutor's office and Judiciary staff concerning some aspects of this measure and respectfully submits the following amendments for your review to improve this bill:

1. Page 2, line 18, amend to read "(c) In the case of a person nineteen years of age," By deleting the word "over" this amendment would include the person's nineteenth birthday.
2. To avoid conflict with Section 352-25, Hawaii Revised Statute, on Page 1, line 5, amend to read "**and revocation.** (a) Full power to revoke paroles" and Page 4, line 6, amend to read "revoke furlough for persons under the age of nineteen." In both instances, deleting the words "grant and" ensures prior court approval is obtained when specifically required in the commitment order.
3. Page 5, under "SECTION 3. Section 352-26, Hawaii Revised Statutes, is repealed" amend to add current Section 352-26, Hawaii Revised Statute, in its entirety, bracketed and stricken, to conform to Ramseyer format for deleting a section.

We appreciate your consideration of the proposed amendments and have included them in the attached draft. If I or my staff can assist in any way, please do not hesitate to contact me at 587-5710. Thank you for the opportunity to testify on this important manner.

A BILL FOR AN ACT

RELATING TO WARRANTS ISSUED BY THE EXECUTIVE DIRECTOR OF THE
OFFICE OF YOUTH SERVICES.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF HAWAII:

1 SECTION 1. Chapter 352, Hawaii Revised Statutes, is
2 amended by adding a new section to be appropriately designated
3 and to read as follows:

4 "Section 352- Terms and conditions of parole; suspension
5 and revocation. (a) Full power to revoke paroles is conferred
6 upon the director or the director's designee. Every parole
7 granted under this part to any person whose legal custody was
8 vested in the director shall be subject to the express
9 conditions to be set forth in the official written notification
10 of parole. The provisions of subsections (b) or (c) shall
11 apply, if, in the opinion of the director or the director's
12 designee, such person is in violation of the terms and
13 conditions of the person's parole.

14 (b) In the case of a person under nineteen years of age,
15 the director or the director's designee may:

16 (1) Issue a warrant authorizing all of the officers named
17 therein to arrest and return to actual custody, any

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1 paroled ward for placement in an appropriate youth
2 correctional facility. The chief of police of each
3 county, all police officers of any county, and all law
4 enforcement officers of the State shall execute any
5 such order in like manner as ordinary criminal
6 process.

7 (2) In the event of retaking for an alleged violation of
8 parole, the director or the director's designee shall
9 notify the person, and the person's parent, guardian,
10 or custodian shall be advised of the specific terms
11 and conditions of the person's parole which the person
12 is alleged to have violated and of the person's right
13 to legal counsel and to appeal the issuance and
14 execution of such order. The youth correctional
15 facility administrator or designee shall hold a due
16 process hearing within seven days after the person's
17 return to determine whether parole should be revoked.

18 (c) In the case of a person nineteen years of age, the
19 director or the director's designee may:

20 (1) If the alleged violation constitutes a crime, issue a
21 warrant authorizing all of the officers named therein
22 to arrest and return to actual custody any paroled

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1 ward for placement in an appropriate adult
2 correctional facility. The chief of police of each
3 county, all police officers of any county, and all law
4 enforcement officers of the State shall execute any
5 such order in like manner as ordinary criminal
6 process.

7 (2) If the alleged violation does not constitute a crime,
8 the director or the director's designee may petition
9 the family court for an ex parte order based on the
10 alleged violation to take the person into custody and
11 place the person in an appropriate adult correctional
12 facility.

13 (3) In the event of retaking for an alleged violation of
14 parole, the director or the director's designee shall
15 notify the person of the specific terms and conditions
16 of the person's parole which the person is alleged to
17 have violated and of the person's right to legal
18 counsel and to appeal the issuance and execution of
19 such order. The Hawaii youth correctional facility
20 administrator or designee shall hold a due process
21 hearing within seven days after the person's return to
22 determine whether parole should be revoked."

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1 SECTION 2. Chapter 352, Hawaii Revised Statutes, is
2 amended by adding a new section to be appropriately designated
3 and to read as follows:

4 "Section 352- Taking into custody and detaining persons
5 for absconding from furlough and escape. (a) Full power to
6 revoke furlough for persons under the age of nineteen is
7 conferred upon the director or the director's designee. Every
8 furlough granted under this part to any person whose legal
9 custody was vested in the director shall be subject to the
10 express conditions to be set forth in the official written
11 notification of furlough.

12 (b) Any person whose legal custody has been vested in the
13 director and who has absconded from furlough or escaped from the
14 facility may be taken into custody by a county police officer or
15 State law enforcement officer without a warrant or an order
16 issued by the director and returned to the youth correctional
17 facility.

18 (c) For purposes of this section absconding from furlough
19 means not returning to the youth correctional facility at the
20 time designated in the written notification of furlough.
21 Absconding from furlough is an escape and may be charged as such
22 in family court or circuit court."

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1 SECTION 3. Section 352-26, Hawaii Revised Statutes, is
2 repealed.

3 ~~["§352-26 Taking into custody and detaining persons for~~
4 ~~violations of terms and conditions of parole and furlough and~~
5 ~~attempted escape. (a) With respect to any person whose legal~~
6 ~~eustody was vested in the director, who has been paroled or~~
7 ~~furloughed from a youth correctional facility by the director~~
8 ~~and returned to the person's own home or other place within the~~
9 ~~community, the provisions of subsection (b) or (c) shall apply,~~
10 ~~if, in the opinion of a designated employee of the department,~~
11 ~~such person is in violation of the terms and conditions of the~~
12 ~~person's parole or furlough.~~

13 ~~(b) In the case of a person under nineteen years of age,~~
14 ~~such designated employee may:~~

15 ~~(1) Notify the director or the director's designated agent~~
16 ~~of such alleged violation and, if the director issues~~
17 ~~a written order to such effect, take such person into~~
18 ~~eustody and place such person in such appropriate~~
19 ~~youth correctional facility as may be designated in~~
20 ~~such order until determinations as to such person's~~
21 ~~further care and treatment are made. In the event of~~
22 ~~retaking for an alleged violation of parole, the~~

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1 ~~director or the director's agent shall notify the~~
2 ~~person, and the person's parent, guardian, or~~
3 ~~eustodian of the right to legal counsel and to appeal~~
4 ~~the issuance and execution of such order. The office~~
5 ~~of juvenile parole shall hold a hearing within thirty~~
6 ~~days after the person's return to determine whether~~
7 ~~parole should be revoked. The juvenile parole office~~
8 ~~staff shall render reasonable aid to the person in~~
9 ~~preparation for the hearing.~~

10 ~~(2) Take such person into custody and place the person in~~
11 ~~an appropriate youth correctional facility until~~
12 ~~determinations as to such person's further care and~~
13 ~~treatment are made by the department if such employee~~
14 ~~has reason to believe that permitting such person to~~
15 ~~remain in the person's own home or other place within~~
16 ~~the community would be dangerous to the person or to~~
17 ~~the community or that such person is about to flee the~~
18 ~~jurisdiction of the department. Such employee, at the~~
19 ~~time of taking such person into custody, shall advise~~
20 ~~such person as to the specific terms and conditions of~~
21 ~~the person's parole or furlough which the person is~~
22 ~~alleged to have violated and of the person's right to~~

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1 ~~legal counsel and appeal. Provisions regarding~~
2 ~~possible parole revocation shall apply as enumerated~~
3 ~~in paragraph (1).~~

4 ~~(c) In the case of a nineteen year old person such a~~
5 ~~designated employee may:~~

6 ~~(1) Take the person into custody and place the person in~~
7 ~~an appropriate adult correctional facility if the~~
8 ~~alleged violation constitutes a crime and the director~~
9 ~~has been notified and subsequently issued a written~~
10 ~~order to that effect. In the event of retaking for~~
11 ~~such an alleged violation of parole, the director or~~
12 ~~the director's agent shall notify the person of the~~
13 ~~right to legal counsel and to appeal the issuance and~~
14 ~~execution of such order. The office of juvenile~~
15 ~~parole shall hold a hearing within thirty days after~~
16 ~~the person's incarceration in an adult facility to~~
17 ~~determine whether parole should be revoked. The~~
18 ~~juvenile parole office staff shall render reasonable~~
19 ~~aid to the person in preparation for the hearing.~~

20 ~~(2) Notify the director of an alleged violation of~~
21 ~~parole. The director may petition the family court~~
22 ~~for an ex parte order based on the alleged violation~~

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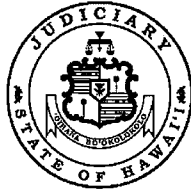
1 ~~to take the person into custody and place the person~~
2 ~~in an appropriate adult correctional facility. The~~
3 ~~person shall be notified of the issuance and execution~~
4 ~~of such a court order and of the right to legal~~
5 ~~counsel and appeal. A juvenile parole office hearing~~
6 ~~shall be held within thirty days after a person's~~
7 ~~placement in an adult facility to determine whether~~
8 ~~parole shall be revoked.~~

9 ~~(d) Any person whose legal custody has been vested in the~~
10 ~~director and who has escaped from the facility may be taken into~~
11 ~~custody by a police officer or an employee of the department~~
12 ~~without a warrant or an order issued by the director and~~
13 ~~returned to the facility.~~

14 ~~(e) When called upon by any designated employee of the~~
15 ~~department, any police officer shall assist in taking a person~~
16 ~~into custody pursuant to the provisions of this section."]~~

17 SECTION 4. Statutory material to be repealed is bracketed
18 and stricken. New statutory material is underscored.

19 SECTION 5. This Act shall take effect July 1, 2010.



Testimony to the Twenty-Fifth State Legislature, Regular Session of 2010

Senate Committee on Human Services

The Honorable Suzanne Chun Oakland, Chair

The Honorable Les Ihara, Jr., Vice Chair

Senate Committee on Public Safety and Military Affairs

The Honorable Will Espero, Chair

The Honorable Robert Bunda, Vice Chair

Thursday, February 11, 2010, 1:15 p.m.

State Capitol, Conference Room 016

by

Thomas R. Keller

Administrative Director of the Courts

WRITTEN TESTIMONY ONLY

Bill No. and Title: Senate Bill No. 2720, Relating to Warrants Issued by the Executive Director of the Office of Youth Services.

Purpose: Authorizes the Executive Director of the Office of Youth Services to issue warrants for the arrest and return to custody of wards paroled from the Hawaii Youth Correctional Facility. Additionally, authorizes county police and State law enforcement officers to arrest any ward who absconds from furlough or escapes from the Hawaii Youth Correctional Facility.

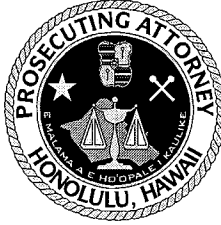
Judiciary's Position:

The Judiciary takes no position on this bill but has the following comments. This bill refers to "ordinary criminal process" in two sections. The Judiciary respectfully requests that this language be deleted, because the Legislature has scrupulously avoided attaching the label "criminal" in the area of juvenile justice. Just as importantly, however, is the concern that referring to "ordinary criminal process" is confusing. Each county police department has different processes relating to adults and juveniles. The counties' departments may have different processes among themselves. Therefore, it may be clearer to instead list specific procedures which relate to juveniles (see page 2, lines 5-6 and page 3, lines 5-6.)

Thank you for the opportunity to submit testimony on this matter.

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THE HONORABLE WILL ESPERO, CHAIR
SENATE PUBLIC SAFETY AND MILITARY AFFAIRS
Twenty-fifth State Legislature
Regular Session of 2010
State of Hawai'i**

February 11, 2010

**RE: S.B. 2720; RELATING TO WARRANTS ISSUED BY THE EXECUTIVE
DIRECTOR OF THE OFFICE OF YOUTH SERVICES.**

Chair Chun Oakland and members of the Senate Committee on Human Services, Chair Will Espero and members of the Senate Committee on Public Safety and Military Affairs, the Department of the Prosecuting Attorney submits the following testimony in support of S.B. 2720.

The purpose of this bill is to provide statutory authority for the Executive Director of the Office of Youth Services to issue warrants for violations of conditions of parole by youths committed to the Hawaii Youth Correctional Facility (HYCF). In addition, the bill clarifies the procedure that will apply when the youth is retaken under the warrant or when the youth absconds from furlough or escape from HYCF.

Under the current system, letters of detention are issued when a youth violates the terms of his or her parole. As these letters are not necessarily sufficient for the police to take the youth into custody, the youths may not be taken into custody until they commit a new offense. This bill would correct this problem by authorizing the director to issue an arrest warrant which the police can execute without the commission of a new offense.

For this reason, we support the passage of S.B. 2720 and thank you for this opportunity to testify.

Thank you for this opportunity to testify.