



GOV. MSG. NO. 1319

EXECUTIVE CHAMBERS  
HONOLULU

DAVID Y. IGE  
GOVERNOR

July 6, 2016

The Honorable Ronald D. Kouchi,  
President  
and Members of the Senate  
Twenty-Eighth State Legislature  
State Capitol, Room 409  
Honolulu, Hawai'i 96813

The Honorable Joseph M. Souki,  
Speaker and Members of the  
House of Representatives  
Twenty-Eighth State Legislature  
State Capitol, Room 431  
Honolulu, Hawai'i 96813

Dear President Kouchi, Speaker Souki, and Members of the Legislature:

This is to inform you that on July 6, 2016, the following bill was signed into law:

HB2391 HD2 SD2 CD1

RELATING TO THE RELEASE OF CERTAIN  
MISDEMEANANTS  
**ACT 217 (16)**

Sincerely,

DAVID Y. IGE  
Governor, State of Hawai'i

JUL 6 2016

on \_\_\_\_\_  
HOUSE OF REPRESENTATIVES  
TWENTY-EIGHTH LEGISLATURE, 2016  
STATE OF HAWAII

ACT 217  
H.B. NO. 2391  
H.D. 2  
S.D. 2  
C.D. 1

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# A BILL FOR AN ACT

RELATING TO THE RELEASE OF CERTAIN MISDEMEANANTS.

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

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

4 "§353-A Release of misdemeanants to prevent overcrowding.

5 (a) Notwithstanding chapter 804 and any other law to the  
6 contrary and except as provided in subsection (b), the director  
7 may order the release of a misdemeanant on recognizance to  
8 prevent overcrowding when a community correctional center has  
9 reached capacity, as determined by the director. The director  
10 shall consider the circumstances and nature of the  
11 misdemeanant's charge or offense prior to ordering a release  
12 pursuant to this section. The director's order shall supersede  
13 and have the same force and effect as an order entered by a  
14 court pursuant to chapter 804. For purposes of this section and  
15 section 353-B, "misdemeanant" means a person incarcerated at a  
16 community correctional center who has been charged with a petty  
17 misdemeanor or misdemeanor, or an incarcerated person who has  
18 been sentenced pursuant to section 706-663.



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

4        (1) The person has been denied bail or whose bail has been  
5 set at more than \$5,000 pursuant to chapter 804;

6        (2) The person is charged with or convicted of or is on  
7 probation or parole for a serious crime, as defined in  
8 section 804-3;

9        (3) The person has been arrested or convicted for abuse of  
10 family or household members, as defined in section  
11 709-906; or

12        (4) Other than the offense for which release is  
13 contemplated under this section, the person has been  
14 previously convicted of any offense, as defined in  
15 title 37, that involves injury or threat of injury to  
16 the person of another, including but not limited to  
17 sexual harassment in the fourth degree, harassment by  
18 stalking, violation of an order of protection, or  
19 violation of a temporary restraining order.

20        (c) The authority to release a misdemeanor pursuant to  
21 this section is granted solely for the purpose of managing the



1 population of the community correctional centers. Nothing in  
2 this section shall be construed as granting any person the right  
3 to be released. An order releasing a misdemeanant pursuant to  
4 this section shall not operate to dismiss or otherwise terminate  
5 any charges then pending against the misdemeanant.

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

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

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

19 §353-B Terms and conditions of release; violations;  
20 sanctions. (a) A misdemeanant released pursuant to section  
21 353-A shall be subject to the conditions stated in section 804-



1 7.4. In addition, the director may impose any of the conditions  
2 that a court is authorized to impose pursuant to section 804-7.1  
3 and shall impose any conditions contained in any court order  
4 superseded by the director's order.

5 (b) Intentional violations of the conditions of release  
6 shall be disposed of as provided in sections 804-7.2 and  
7 804-7.3."

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

10 "§706-663 Sentence of imprisonment for misdemeanor and  
11 petty misdemeanor. After consideration of the factors set forth  
12 in sections 706-606 and 706-621, the court may sentence a person  
13 who has been convicted of a misdemeanor or a petty misdemeanor  
14 to imprisonment for a definite term to be fixed by the court and  
15 not to exceed one year in the case of a misdemeanor or thirty  
16 days in the case of a petty misdemeanor[-], subject to earlier  
17 release pursuant to section 353-A."

18 SECTION 3. The director of public safety shall report to  
19 the legislature no later than twenty days prior to the convening  
20 of the regular sessions of 2018, 2019, and 2020 with respect to



1 the implementation of this Act. The report shall include but  
2 not be limited to:

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

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



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

4 SECTION 6. In codifying the new sections added by section  
5 1 of this Act, the revisor of statutes shall substitute  
6 appropriate section numbers for the letters used in designating  
7 the new sections in this Act.

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

10 SECTION 8. This Act shall take effect on July 1, 2016, and  
11 shall be repealed on July 1, 2020; provided that section 706-  
12 663, Hawaii Revised Statutes, shall be reenacted in the form in  
13 which it read on the day prior to the effective date of this  
14 Act.

APPROVED this 6 day of JUL, 2016



GOVERNOR OF THE STATE OF HAWAII

