

CHAPTER 353
CORRECTIONS

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Note

Chapter heading amended by L 1987, c 338, §3(1); L 1989, c 211, §7.

Incarcerated parents; forms or questions to ask offenders upon intake; plan for management of data collected and public disclosure of data. L 2015, c 16, §3.

Parent-child interaction programs. L 2007, c 250.

Reports to 2018-2020 legislature on release of misdemeanants to prevent overcrowding. L 2016, c 217, §3.

Cross References

Cession of concurrent jurisdiction, see §1-4.5.

Criminal offender treatment act, see chapter 353G.

Department of public safety, see chapter 353C.

Drug demand reduction assessments; special fund, see §706-650.

Forensic identification, see chapter 844D.

Notice of prisoner escape, see §706-673.

Sexual assaults in prison, see §353C-8.

Transfer of youth corrections functions, see §352D-4.

Case Notes

Neither this chapter nor chapter 706 prohibits the Hawaii paroling authority from setting a prisoner's minimum term at a period equal to his or her maximum sentence. 97 H. 183, 35 P.3d 210 (2001).

Community correctional center holding unit was not a "facility". 7 H. App. 247, 753 P.2d 816 (1988).

"PART I. [OLD] PRISONS AND PRISONERS GENERALLY

§§353-1 to 353-50 [OLD] REPEALED. L 1987, c 338, §3(2).

Note

L 1987, c 127, §2 and c 142, pt of §1 purport to amend repealed §§353-1.1, 353-1.2, 353-4, and 353-30.

PART I. ADMINISTRATIVE STRUCTURE, INSTITUTIONS, AND SERVICES

Law Journals and Reviews

The Hawaii Prison Inmate's Emerging Right to Due Process. 10 HBJ, no. 4, at 115 (1974).

§353-1 Definitions; director may delegate powers. As used in this chapter, unless the context otherwise requires:

"Committed person" means a person committed to the custody of the director of public safety for imprisonment pursuant to chapter 706, including a probationer serving a term of imprisonment pursuant to section 706-624(2)(a) and a misdemeanor or petty misdemeanor sentenced pursuant to section 706-663.

"Department" means the department of public safety.

"Director" means the director of public safety; provided that the signing or approval of vouchers and other routine matters may be delegated by the director to any authorized subordinate. [L 1987, c 338, pt of §3; am L 1989, c 211, §8; am L 1993, c 72, §1]

" **§353-2 REPEALED.** L 1989, c 211, §13.

" **§353-2.5 REPEALED.** L 1992, c 65, §2.

" **§§353-3 and 353-4 REPEALED.** L 1989, c 211, §§14, 15.

" **§353-5 Offender release recommendations to the court.** The intake service center shall notify the prosecutor's office of the appropriate county whenever it is recommending to the court that a person who is accused of murder or attempted murder in any degree or a class A felony involving force or violence against another person be conditionally released or that bail for such person be lowered. Such notice shall be made upon the completion of the intake service center's investigation on the offender's case so as to allow the prosecutor's office of the appropriate county to be present when the court considers the recommendation. [L 1987, c 338, pt of §3]

" **§353-6 Establishment of community correctional centers.**

(a) There shall be a community correctional center for each county under the direction and administration of the director. Any community correctional center may be integrated and operated concurrently with any other correctional facility or facilities. Each center shall:

- (1) Provide residential detention for persons who have been arraigned or have made an initial appearance and who have not been admitted to bail, released to appear, or otherwise released;
- (2) Provide residential custody and correctional care for committed misdemeanants and for felons committed to indeterminate sentences;

- (3) Provide for committed persons, correctional services, including but not limited to, social and psychiatric-psychological evaluation, employment, counseling, social inventory, correctional programming, medical and dental services, and sex abuse education and treatment programs for persons convicted of sexual offenses or who are otherwise in need of these programs;
 - (4) Provide recreational, educational, and occupational training, and social adjustment programs for committed persons;
 - (5) Provide referrals to community educational, vocational training, employment, and work study programs; and aftercare, supervisory, and counseling services for persons released from centers.
- (b) Each county shall provide residential detention for persons who are prearrest detainees. [L 1987, c 338, pt of §3; am L 1989, c 350, §1; am L 1995, c 72, §1]

" **[§353-6.5] Gender-responsive, community-based programs for female offenders.** Subject to funding by the legislature, the department of public safety shall develop and make available gender-responsive, community-based programs for female offenders by providing female offenders the appropriate range of opportunities to ensure that their needs are met. Program models designed to address female offender needs shall include but are not limited to:

- (1) Appropriate treatment, including substance abuse and mental health treatment;
- (2) Individualized case management to help female offenders set and achieve goals;
- (3) Life skills development workshops, including budgeting, money management, nutrition, and exercise;
- (4) Development of self-determination through education; employment training; special education for the learning disabled; and social, cognitive, communication, and life skills training;
- (5) Family-focused programming, including issues relating to pregnancy and single parenthood;
- (6) Peer support and the development of peer networks;
- (7) Transitional support for female offenders and their families to promote successful reentry into their families and communities;
- (8) Highly skilled staff experienced in working with female offenders and their concerns;
- (9) Formal recognition of participant achievement;
- (10) Ongoing attention to building community-based support;

- (11) Assistance for female offenders who need to develop a marketable job skill and a career plan;
- (12) Geographical proximity to children and family; and
- (13) The goal of providing a gender-responsive continuum of care. [L 2006, c 258, §4]

Cross References

Parity for female offenders, see chapter 367D.

" **§353-7 High security correctional facility.** (a) The director shall maintain a high security correctional facility for the residential care, correctional services, and control of high custodial risk convicted felons or the temporary detention of high custodial risk persons awaiting trial. The high security correctional facility may be integrated and operated concurrently with any other correctional facility or facilities.

(b) The facility shall:

- (1) Provide extensive control and correctional programs for categories of persons who cannot be held or treated in other correctional facilities including, but not limited to:
 - (A) Individuals committed because of serious predatory or violent crimes against the person;
 - (B) Intractable recidivists;
 - (C) Persons characterized by varying degrees of personality disorders;
 - (D) Recidivists identified with organized crime; and
 - (E) Violent and dangerously deviant persons;
- (2) Provide correctional services including, but not limited to, psychiatric and psychological evaluation, social inventory, correctional programming, and medical and dental services; and
- (3) Provide recreational, educational, occupational training, and social adjustment programs. [L 1987, c 338, pt of §3; am L 1989, c 41, §1]

" **§353-8 Conditional release centers for committed persons.**

(a) The director may establish and operate facilities to be known as conditional release centers, either operated separately, or as part of community correctional centers.

(b) The purpose of such facilities is to provide housing, meals, supervision, guidance, furloughs, and other correctional programs for persons committed to the department of public safety and to give committed persons, in selected cases, a chance to begin adjustment to life in a free society and to

serve as a test of an individual's fitness for release on parole.

(c) The department shall notify the county prosecutors and police chiefs whenever a person committed for an offense against the person as described in chapter 707, or any convicted felon, is admitted to a work furlough, conditional release, or similar program. Notification shall be transmitted in writing no later than thirty days prior to the commencement of the program and shall list the conditions pertaining thereto. For parole violators who are recommitted to prison for less than thirty days or who are placed on a work furlough, conditional release, or similar program, notification as described above shall be transmitted in writing on the next working day after recommitment or placement in a program.

(d) Additionally, whenever the department admits a committed person who has been convicted of an offense against the person as described in chapter 707, or of an attempt to commit such an offense, to a work furlough program, conditional release program, or other similar programs, it shall give written notice to each victim of the offense, who has made written request for such notice, of the admission of the committed person to the program. Notice shall be given to the victim at the address given on the request for notice or such address as may be provided to the department by the victim from time to time. Neither the failure of any state officer or employee to carry out the requirements of this section nor compliance with it shall subject the State or the officer or employee to liability in any civil action. However, such failure may provide a basis for such disciplinary action as may be deemed appropriate by competent authority. [L 1987, c 338, pt of §3; am L 1989, c 211, §8; am L 1992, c 64, §1; am L 1993, c 21, §1]

Cross References

Registration of sex offenders and other covered offenders, see chapter 846E.

" **§353-9 Establishment of temporary correctional facilities.** The director, with the prior approval of the governor, may establish, from time to time, temporary correctional facilities, if required in conjunction with projects or specialized service authorized by law. The temporary facilities shall be discontinued upon termination of the project. [L 1987, c 338, pt of §3]

" **§353-10 Intake service centers.** *[Repeal and reenactment on July 1, 2018. L 2013, c 67, §2.]* (a) There shall be within the department of public safety, an intake service center for adults in each of the counties to screen, evaluate, and classify the admission of persons to community correctional centers. 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.

- (b) The centers shall:
 - (1) Provide orientation, guidance, and technical services;
 - (2) Provide social-medical-psychiatric-psychological diagnostic evaluation;
 - (3) Conduct internal pretrial risk assessments on adult offenders 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) Provide correctional prescription program planning and security classification;
 - (5) Provide other personal and correctional services as needed for both detained and committed persons;
 - (6) Monitor and record the progress of persons assigned to correctional facilities who undergo further treatment or who participate in prescribed correctional programs;
 - (7) Provide continuing supervision and control of persons ordered to be placed on pretrial supervision by the court and persons ordered by the director; and
 - (8) Provide pretrial bail reports to the courts on adult offenders that are consented to by the defendant or that are ordered by the court. The pretrial bail reports shall be confidential and shall not be deemed

to be public records. A copy of a pretrial bail report shall be provided only:

- (A) To the defendant or defendant's counsel;
- (B) To the prosecuting attorney;
- (C) To the department of public safety;
- (D) To any psychiatrist, psychologist, or other treatment practitioner who is treating the defendant pursuant to a court order;
- (E) Upon request, to the adult client services branch; and
- (F) In accordance with applicable laws, persons, or entities doing research. [L 1987, c 338, pt of §3; am L 1989, c 211, §8; am L 1996, c 130, §2; am L Sp 2009, c 24, §1; am L 2012, c 76, §3, c 139, §§3, 14(4) and c 141, §1; am L 2013, c 67, §1]

Note

The 2013 amendment is exempt from the repeal and reenactment condition of L 2012, c 139, §14, as amended by L 2013, c 67, §2. L 2013, c 67, §4.

The repeal and reenactment note at this section in the main volume is amended to read as follows: "[Repeal and reenactment on July 1, 2018. L 2013, c 67, §2; L 2016, c 231, §69.]".

" **§353-10.5 Intermediate sanctions; eligibility; criteria and conditions.**

(a) The department of public safety shall implement alternative programs that place, control, supervise, and treat selected offenders in lieu of incarceration.

(b) Pretrial detainees may be considered for placement in alternative programs if they:

- (1) Have been admitted to bail and are not charged with a non-probationable class A felony; and
- (2) Have not, within the previous five years, been convicted of a crime involving serious bodily injury or substantial bodily injury as defined by chapter 707.

(c) Sentenced offenders and other committed persons may be considered for placement in alternative programs as a condition of furlough or release, provided that the person is otherwise eligible for or has been granted furlough or release pursuant to section 353-8 or 353-17.

(d) As used in this section, "alternative programs" mean programs that are created and funded by legislative appropriation or federal grant naming the department of public safety or one of its operating agencies as the expending agency

and that are intended to provide an alternative to incarceration. Alternative programs may include:

- (1) Home detention, curfew using electronic monitoring and surveillance, or both;
- (2) Supervised release, graduated release, furlough, and structured educational or vocational programs; and
- (3) Similar programs created and designated as alternative programs by the legislature or the director of public safety for inmates who do not pose significant risks to the community. [L Sp 1995, c 25, §2; am L 2016, c 231, §60]

Cross References

For similar provisions, see §§353-63.5 and 706-605.1.

" **§353-11 Access to correctional facilities and records; instituting of inquiries and securing information.** (a) The Hawaii paroling authority and every member thereof and the director, at all times, shall have free access to all correctional facilities throughout the State, wherein persons convicted of crime are confined, and to all records and books kept in connection therewith, and may institute inquiries about any committed person whether confined or on parole.

All circuit judges, district judges, prosecuting attorneys, sheriffs, police officers, and other court and corrections officials and employees shall furnish, when called upon by the paroling authority or director, all information that may be possessed concerning any committed person.

(b) Upon the refusal of any person in charge of any such correctional facility to give free access thereto or to any records or books kept in connection therewith, or of any such officer, district judge, sheriff, official, or employee to furnish such information, the paroling authority or director may make informal application in writing to any circuit court, reciting the facts and requesting an order directing the person concerned to give such access, or furnish such information and the court, after such reasonable notice to the person as it shall direct, shall proceed to hear the application and shall make such order as may appear proper. In case of the refusal of a circuit judge to furnish information as is required by this section, the paroling authority or director may apply to the intermediate appellate court for relief in the same manner as in the case of an application to a circuit court provided in this section. The circuit courts and the intermediate appellate court, subject to chapter 602, shall have jurisdiction and all powers necessary for the purposes of this section.

(c) In all investigations made by the paroling authority or director and in all proceedings before it or the director, the paroling authority and each member thereof and the director shall have the same powers respecting administering oaths, compelling the attendance of witnesses, and the production of documentary evidence and examining witnesses as are possessed by circuit courts. In case of disobedience by any person of any order of the paroling authority or any member thereof or the director or of any subpoena issued by it or the director or of the refusal of any witness to testify to any matter regarding which the witness may be questioned lawfully, any circuit judge, on application by the paroling authority or a member thereof or the director, shall compel obedience as in case of disobedience of the requirements of a subpoena issued from a circuit court or a refusal to testify therein. The fees and traveling expenses of witnesses shall be the same as are allowed witnesses in the circuit court and shall be paid by the State on vouchers approved by the director out of any appropriation or funds available for the expenses of the department. [L 1987, c 338, pt of §3; am L 1989, c 211, §10; am L 1990, c 281, §11; am L 2006, c 91, §3]

" **§353-11.5 Restricted access to correctional facilities.**

(a) Except for the director and employees of the department of public safety, members of the Hawaii paroling authority, and those persons specified in section 353-29, no person shall enter or remain on the grounds of any state correctional facility unless permission to so enter or remain has been obtained from the administrator of the correctional facility, the administrator's designated representatives, or the director.

(b) Signs shall be posted at reasonable intervals along the boundary of correctional facilities, informing the public of the restriction against access provided in subsection (a).

(c) Any person who violates subsection (a) shall be guilty of a misdemeanor. [L 1987, c 34, §1 and c 338, §10; am L 1988, c 141, §31; am L 1989, c 211, §8]

" **§353-12 Correctional records, documents.** The director shall establish a record of all facts relating to the admission, sentence, commutation, parole, pardon, discharge, escape, death, and correctional programs of any committed person, all actions that are taken for breach of correctional rules, and all other occurrences of note concerning the committed person.

The director or a designated agent shall file all warrants, mittimus, processes, and other official papers, or the attested copies of them, by which any committed person has been committed, paroled, liberated, or retaken and they shall be

safely kept in a suitable box or safe. Upon the death, resignation, or removal from office of the person so having custody of the papers, they shall be delivered, together with all other official records, papers, and journals, to the person's successor or to any other officer or person duly appointed to receive them. In default of such delivery the director or a designated agent, as the case may be, if living, may be held liable for theft as provided by section 708-830, and shall also be civilly liable in damages to any other person who is injured by such nondelivery. If the director or agent, as the case may be, is dead, the civil liability shall attach to such person's personal representatives and the sureties upon such person's official bond, if any has been required jointly and severally. In addition to the civil liability, the person or the person's personal representatives and sureties on the official bond shall forfeit and pay for each such default in delivery the sum of \$200 to be recovered for the use of the general fund of the State. [L 1987, c 338, pt of §3]

" **[§353-12.5] Public assistance; inmates; monthly reports to department of human services.** Beginning January 31, 2010, to assist the department of human services to enforce section 346-29(b), the director shall prepare and transmit to the department of human services monthly reports listing all inmates newly admitted during the previous month to any correctional facility within the State; provided that no later than December 31, 2009, the director shall transmit to the department of human services an initial list of all inmates within the department of public safety's correctional facilities statewide. [L 2009, c 188, §2]

" **§353-13 Examination by medical officer.** The medical officer of a correctional facility shall carefully examine any committed person upon admission and shall establish a medical record and enter therein a statement of the committed person's physical condition upon entry and all subsequent medical treatment and examination made while such person is residing at a state correctional facility. [L 1987, c 338, pt of §3]

" **[§353-13.1] Nonemergency medical, dental, mental health services or treatment; intentional injury; payment by inmates.** (a) The department of public safety may develop policies and procedures governing the assessment of fees upon detainees and committed persons who receive certain medical, dental, or mental health services or treatment. In adopting these policies and procedures, the department shall safeguard the health and welfare of detainees and committed persons.

(b) The policies and procedures shall enable the department to assess fees upon detainees and committed persons who:

- (1) Request certain nonemergency medical, dental, or mental health services or treatment; or
- (2) Intentionally inflict injury to themselves.

(c) The policies and procedures shall include an appeals process to allow a detainee or committed person to appeal the assessment.

(d) The department of public safety may adopt policies and procedures to establish a fee schedule for medical, dental, and mental health services or treatment under the following conditions:

- (1) Fees shall be assessed from the detained or committed person's individual trust account pursuant to section 353-20; and
- (2) Fees shall not be assessed if the individual trust account balance is less than \$10; provided that the department may implement a procedure to recover fees in the future. [L 1998, c 250, §1]

" **§353-13.2 REPEALED.** L 1998, c 194, §10.

" **[§353-13.3] Mental health care.** The department shall be responsible for providing mental health services in community correctional centers. [L 1994, c 153, §2]

" **[§353-13.4] Substance abuse testing of inmates.** (a) When an inmate under the custody of the department of public safety is subjected to substance abuse testing, the inmate shall be afforded the option of a confirmatory test by a licensed, certified laboratory as provided in chapter 329B. The cost of a confirmatory test shall be paid for by the State; provided that in those instances where a positive test result is confirmed, the inmate shall be charged with the cost of the confirmatory test.

(b) All specimens shall be sealed and coded in the presence of the inmate and the inmate shall sign an approved form acknowledging that the specimen has been sealed and coded in the inmate's presence. The director of the department of public safety shall establish a chain-of-custody procedure that includes a tracking form documenting the handling and storage of the specimen from collection to final disposition of the specimen.

(c) Positive test results of substance abuse testing and the availability of a confirmatory test shall be provided to the inmate in writing.

(d) A positive test result from a substance abuse test that fails to meet the requirements of this section shall not be reported or recorded. [L 1992, c 201, §1]

" **[§353-13.5] Election of private medical or psychological care by prisoners.** The director shall permit prisoners to retain any private licensed medical doctor or psychologist for their own care at the correctional facility in addition to such care as may be provided by the department; provided that any fees or other costs charged by a private medical doctor or psychologist for such care shall be the sole responsibility of the prisoner and that such care shall not put the correctional facility to any hazard and that such care shall conform to the department's rules and established practices including any requirements concerning advance notice of visits with the prisoner. Medical doctors or psychologists who provide such care shall provide timely reports to the department as to the physical or psychological progress of the prisoner. If the private care is discontinued, the department shall be notified immediately by the private medical doctor or psychologist. In no event shall the department or the State incur any civil liability whatsoever as a result of any private medical or psychological care administered under this section. [L 1987, c 128, §1]

" **§353-13.6 Involuntary medical treatment criteria.** (a) An inmate or detainee in the custody of the department may be ordered to receive involuntary medical treatment, including the taking or application of medication, if the court finds that:

- (1) The inmate or detainee poses a danger of physical harm to self or danger of physical harm to others;
- (2) Treatment with medication is medically appropriate; and
- (3) Considering less intrusive alternatives, treatment is essential to forestall the danger posed by the inmate or detainee.

(b) For the purposes of this section:

"Danger of physical harm to others" means likely to cause substantial physical or emotional injury to another, as evidenced by an act, attempt, or threat occurring recently or through a pattern of past behavior that has resulted in the person being placed in a more restricted setting for the safety of others in the facility.

"Danger of physical harm to self" means the person recently has threatened or attempted suicide or serious bodily self injury; or the person recently has behaved in such a manner as to indicate that the person is unable, without supervision and

the assistance of others, to satisfy the need for nourishment, essential medical care, or self-protection, so that it is probable that death, substantial bodily injury, or serious physical or mental debilitation or disease will result unless adequate treatment is provided. [L 2011, c 72, pt of §2; am L 2016, c 35, §1]

" **§353-13.7 Initiation of proceeding for involuntary medical treatment.** (a) The director, or the director's designee, may file a petition for involuntary medical treatment alleging that a person in the custody of the department meets the criteria for involuntary medical treatment under section 353-13.6. The petition shall be executed subject to the penalties of perjury but need not be sworn to before a notary public and shall be filed in the circuit court of the circuit wherein the person who is the subject of the petition is in custody. The attorney general, the attorney general's deputy, special deputy, or appointee designated to present the case shall assist the petitioner to state the substance of the petition in plain and simple language. The petition may be accompanied by an affidavit or declaration of the licensed physician or psychologist who has examined the person within five days prior to submission of the petition, unless the person whose treatment is sought has refused to submit to a medical or psychological examination, in which case the fact of refusal shall be alleged in the petition. The affidavit or declaration shall set forth the signs and symptoms relied upon by the physician or psychologist to determine whether the person is in need of treatment, whether the person is capable of realizing and making a rational decision with respect to the person's need for treatment, and the recommended treatment. If the petitioner believes that further evaluation is necessary before treatment, the petitioner may request such further evaluation.

(b) If the person has been given an examination, evaluation, or treatment in a psychiatric facility or by the department within five days before the filing of the petition, and treatment is recommended by the staff of the facility or the department, the petition may be accompanied by an affidavit or declaration of the department's medical director or the mental health administrator in lieu of a physician's or psychologist's affidavit or declaration. [L 2011, c 72, pt of §2; am L 2016, c 35, §2]

" **§353-13.8 Notice; waiver of notice; hearing on petition; waiver of hearing on petition for involuntary medical treatment.** (a) The court shall set a hearing on the petition, and notice of the hearing shall be served personally on the person who is

the subject of the petition, and personally or by certified or registered mail, return receipt requested, deliverable to the addressee only, on either the person's legal guardian or emergency contact listed while in the custody of the department, if such person can be located and served. Notice of the hearing shall also be served on the public defender, person's attorney, or other court-appointed attorney, as the case may be. If the person who is the subject of the petition is a minor, notice of the hearing shall also be served upon the person who has had the principal care and custody of the minor during the sixty days preceding the date of the petition if that person can be found within the State. Notice shall also be given to the other persons as the court may designate.

(b) The notice required by subsection (a) shall include:

- (1) The date, time, place of hearing, a clear statement of the purpose of the proceedings and of possible consequences to the person who is the subject of the petition, and a statement of the legal standard upon which treatment is authorized;
- (2) A copy of the petition;
- (3) Written notice, in plain and simple language, that the person may waive the hearing by voluntarily agreeing to the care or treatment proposed;
- (4) A completed form indicating the waiver described in paragraph (3) if the person waived the hearing;
- (5) Written notice, in plain and simple language, that the person or the person's guardian or representative may apply at any time for a hearing on the issue of the person's need for care or treatment if the person has previously waived a hearing;
- (6) Notice that the person is entitled to the assistance of an attorney and that the public defender has been notified of these proceedings;
- (7) Notice that if the person does not want to be represented by the public defender, the person may contact the person's own attorney; and
- (8) Notice, if applicable, that the petitioner intends to present evidence to show that the person is an incapacitated or protected person, or both, under article V of chapter 560, and whether the appointment of a guardian is sought at the hearing. If appointment of a guardian is to be recommended, and a nominee is known at the time the petition is filed, the identity of the nominee shall be disclosed.

(c) If the person who is the subject of the petition executes and files a waiver of the hearing, then upon acceptance by the court following a court determination that the person

understands the person's rights and is competent to waive them, the court shall order the person to be given the care or treatment as the court deems to be proper under the circumstance. [L 2011, c 72, pt of §2; am L 2016, c 35, §3]

" **§353-13.9 Hearing on petition.** (a) The court may adjourn or continue a hearing for failure to timely notify either the person's legal guardian or emergency contact listed while in the custody of the department, or other person determined by the court to be entitled to notice, or for failure by the person who is the subject of the petition to contact an attorney as provided in section 353-13.8, if the court determines that an adjournment or continuance is in the interest of justice.

(b) Unless the hearing is waived, the court shall hear the petition as soon as possible and no later than ten days after the date the petition is filed unless a reasonable delay is sought for good cause shown by the person who is the subject of the petition, the person's attorney, the petitioner, the guardian or guardian ad litem, or those persons entitled to receive notice of the hearing under section 353-13.8.

(c) The person who is the subject of the petition shall be present at all hearings unless the person waives the right to be present, is unable to attend, or creates conditions that make it impossible to conduct the hearing in a reasonable manner as determined by the court. A waiver is valid only upon acceptance by the court following a judicial determination that the person understands the person's rights and is competent to waive them, or is unable to participate. At any point during the proceedings and after the filing of the petition, the court may appoint a guardian ad litem or a temporary guardian, as provided in article V of chapter 560, to represent the person throughout the proceedings, if the court finds that the person is unable to participate or that other good cause exists.

(d) Hearings may be held at a convenient location within the circuit where the person who is the subject of the petition resides or any other circuit deemed appropriate by the court. The person or any interested person may request a hearing in another circuit because of convenience to the parties, witnesses, or the court, or because of the person's mental or physical condition.

(e) The attorney general, the attorney general's deputy, special deputy, or appointee shall present the case for hearings convened under this section.

(f) Counsel for the person who is the subject of the petition shall be allowed adequate time for investigation of the matters at issue and for preparation, and shall be permitted to

present evidence that the counsel believes necessary to a proper disposition of the proceedings.

(g) No person who is the subject of the petition shall be found to require care or treatment unless at least one physician or psychologist who has personally examined or attempted to examine the person testifies in person at the hearing. This testimony may be waived by the person. If the subject has refused to be examined by a licensed physician or psychologist, the person may be examined by a court-appointed licensed physician or psychologist. If the person refuses and there is sufficient evidence to believe that the allegations of the petition are true, the person's refusal shall be treated as a denial that the person is in need of involuntary medical treatment. Nothing in this section shall limit the person's privilege against self-incrimination.

(h) The person who is the subject of the petition in a hearing under this section has the right to secure an independent medical or psychological evaluation at the person's own expense and present evidence thereon.

(i) If the court finds that the criteria for involuntary medical treatment under section 353-13.6 have been met by clear and convincing evidence, the court may issue an order to authorize the department to involuntarily medically treat the person for a period of up to one year unless the person is sooner released or sooner determined to no longer be in need of treatment. If so specified by the court, however, the order may remain in effect if the person who is the subject of the petition is released but returns to custody during the maximum period of the order, if the underlying criminal case is still active or the sentence has not been fully served, unless the person is sooner determined to no longer be in need of treatment.

(j) The court may find that the person who is the subject of the petition is an incapacitated or protected person, or both, under article V of chapter 560, and may appoint a guardian or conservator, or both, for the person under the terms and conditions as the court shall determine.

(k) Prior to the expiration of an existing involuntary treatment order, the department may move for an extension of the order for a period of up to one year. An extension may be ordered by the court upon a showing that the subject of the order continues to meet the criteria set forth in section 353-13.6. Any extension request shall follow the notice requirements set forth in section 353-13.8. [L 2011, c 72, pt of §2; am L 2016, c 35, §4]

" **§353-14 Cash furnished discharged committed person, when.** Upon the discharge or parole of any committed person who has undergone a commitment or sentence of more than one year, the committed person may be furnished by the Hawaii paroling authority, in its discretion, with funds of not more than \$200, to meet the committed person's immediate needs. The expenditures made by the Hawaii paroling authority shall be included among the accounts for cost and maintenance of committed persons. [L 1987, c 338, pt of §3; am L 1997, c 174, §1]

Case Notes

Denial of "gate money" where parole board determined that plaintiffs had no immediate needs satisfied rational basis test; thus, there was no equal protection violation. 940 F. Supp. 1523 (1996).

Section (1987) provided Hawaii paroling authority board [sic] with complete discretion to assess inmates' needs and to award "gate money" as necessary in light of those needs; thus, no protected property interest existed. The right to "gate money" not so fundamental as to warrant constitutional protection apart from its status under state law. 940 F. Supp. 1523 (1996).

Where plaintiffs argued that State waived its Eleventh Amendment immunity through the enactment of this section and State's Tort Claims Act [sic], §§662-2 and 663-1, no express consent or applicable waiver provisions found. 940 F. Supp. 1523 (1996).

" **§353-15 Transfer of committed persons affected with communicable disease.** Upon written recommendation of the director of health that a committed person determined to have a communicable disease be removed to any hospital, settlement, or place for care and treatment of the communicable disease as designated by the director of health for such specialized care and treatment, the director of public safety may direct any official having custody of any committed person convicted of a felony and incarcerated in a state correctional facility to cause the committed person to be removed to such a place as designated by the director of health, until discharged under chapter 325 or 326 or until the maximum sentence has been served. Any such committed person who may be discharged before the maximum term of imprisonment shall be returned to the state correctional facility from which the committed person was removed. Any such person who has served the maximum sentence before the committed person is discharged under chapter 325 or 326 shall remain in the custody of the director of health until

lawfully discharged or removed by direction or permission. Supervision, care, and treatment of the committed person transferred to any hospital, settlement, or place for the care and treatment of the communicable disease shall be governed by the rules, policies, and procedures of the department of health. [L 1987, c 338, pt of §3; am L 1989, c 211, §8]

" **§353-16 Transfer of committed felon to federal institution.** The director may effect the transfer of a committed felon to any federal correctional institution for imprisonment, subsistence, care, and proper employment of such a felon. [L 1987, c 338, pt of §3; am L 1992, c 267, §2]

Cross References

Interstate compact for the supervision of adult offenders, see chapter 353B.

Interstate corrections compact, see chapter 355D.

" **§353-16.2 Transfer of inmates to out-of-state institutions.** (a) The director may effect the transfer of a committed felon to any correctional institution located in another state regardless of whether the state is a member of the Western Interstate Corrections Compact; provided that the institution is in compliance with appropriate health, safety, and sanitation codes of the state, provides a level of program activity for the inmate that is suitable, and is operated by that state, by any of its political subdivisions, or by a private institution; and provided further that the transfer is either:

- (1) In the interest of the security, management of the correctional institution where the inmate is presently placed, or the reduction of prison overcrowding; or
- (2) In the interest of the inmate.

(b) Terms and conditions of the transfer and any reimbursement for expenses shall be agreed upon between the department and the out-of-state correctional institution prior to transfer. [L 1989, c 42, §1; am L 1992, c 267, §3; am L 1994, c 208, §2; am L 1995, c 170, §4; am L 1996, c 217, §1]

Cross References

Interstate compact for the supervision of adult offenders, see chapter 353B.

Interstate corrections compact, see chapter 355D.

" **§353-16.3 Development of out-of-state Hawaii correctional facilities.** Notwithstanding any other provision to the contrary, the governor, with the assistance of the director, may negotiate with any appropriate out-of-state jurisdiction for the development of Hawaii correctional facilities to reduce prison overcrowding; provided that any agreement negotiated pursuant to this section shall be subject to legislative approval by concurrent resolution in any regular or special session. [L 1992, c 267, §1; am L 1995, c 170, §5]

" **§353-16.35 Development or expansion of in-state correctional facilities.** (a) Notwithstanding any other law to the contrary, the governor, with the assistance of the director, may negotiate with any person for the development or expansion of private in-state correctional facilities or public in-state turnkey correctional facilities to reduce prison overcrowding; provided that if an environmental assessment or environmental impact statement is required for a proposed site or for the expansion of an existing correctional facility under section 343-5, then notwithstanding the time periods specified for public review and comments under section 343-5, the governor shall accept public comments for a period of sixty days following public notification of either an environmental assessment or an environmental impact statement.

(b) Any development or expansion proposal shall address the construction of the facility separate from the operation of the facility and shall consider and include:

- (1) The percentage of low, medium, and high security inmates and the number of prison beds needed to incarcerate each of the foregoing classes of inmates;
- (2) The facility's impact on existing infrastructure, and an assessment of improvements and additions that will be necessary;
- (3) The facility's impact on available modes of transportation, including airports, roads, and highways; and
- (4) A useful life costs analysis.

(c) For the purposes of this section, "useful life costs" means an economic evaluation that compares alternate building and operating methods and provides information on the design, construction methods, and materials to be used with respect to efficiency in building maintenance and facilities operation. [L 1998, c 227, pt of §5; am L 2003, c 221, §1]

" **[§353-16.36] Contracts for construction of correctional facilities by private entities.** The governor may enter into and execute contracts in the name of the State with any private

entity to construct and then lease or purchase correctional facilities on public or private lands for the benefit of the State. [L 1998, c 227, pt of §5]

" **§353-16.37 Community partnering.** Regardless of the method for funding new prison facilities, the department of public safety shall develop and implement a community partnering process to be incorporated into the request for proposal; this partnering process shall include a community hearing for the purpose of soliciting community input. Further, a community benefit and enhancement package shall be developed by the department and the affected community to mitigate the negative aspects of building a correctional facility in the community. The benefit and enhancement package may include but is not limited to:

- (1) Infrastructure improvements;
- (2) Job training programs or improvements to schools and health care facilities;
- (3) Social programs; and
- (4) Other government functions. [L 1998, c 227, pt of §5; am L 1999, c 134, §4]

" **§353-16.5 Transfer of offenders under treaty; authority of governor.** (a) If a treaty in effect between the United States and a foreign country provides for the transfer or exchange of convicted offenders to the country of which they are citizens or nationals, the governor may, on behalf of the State and subject to the terms of the treaty, authorize the director of public safety to consent to the transfer or exchange of offenders and take any other action necessary to initiate the participation of this State in the treaty.

(b) The transfer shall occur only if the receiving foreign country is on an approved list published by Amnesty International concerning that country's treatment of prisoners at the time of transfer. If the receiving country is not on an approved list as noted, the prisoner must consent to the prisoner's transfer to the receiving foreign country. [L 1987, c 53, §1 and c 338, §10; am L 1989, c 211, §8; gen ch 1992]

" **§353-17 Committed persons, furlough, employment.** (a) The director or a designated agent may grant furloughs to committed persons with a minimum or lower security classification in any correctional facility of the department for the purpose of employment, social reorientation, education, or training, or any other valid purpose as determined by the director. Special out-of-state furloughs may be granted to those already otherwise furloughed, at no cost to the State, when death or critical

illness or injury to the committed person's immediate family including a reciprocal beneficiary, occurs. Any committed person who is engaged in private employment, by contract or otherwise, not under the immediate custody of the State shall not be considered an agent or employee of the State. Any moneys earned from employment by such person shall be used to satisfy a restitution order and to reimburse the State for the cost of room and board. If any earned moneys remain after these expenses have been paid, that amount shall be held in an individual account for the committed person.

When an inmate is granted a special out-of-state furlough, the director shall inform the authorities of the state to which the inmate is to be furloughed of the inmate's arrival.

(b) Full power to enforce the terms and conditions of furlough and to retake and reincarcerate a furloughed committed person is conferred upon the director or designated agent. The director or a designated agent, at any time, may issue a warrant authorizing the arrest and return to actual custody of any furloughed committed person for the purpose of ascertaining whether or not the terms and conditions of furlough have been violated so as to justify revoking the furlough and to retake and reincarcerate the furloughed committed person. The administrators of all of the correctional facilities of the State, the chief of police of each county, all police officers of the State, and all correctional facility officials shall execute any such warrant of arrest in like manner as an ordinary criminal process.

(c) Any furloughed committed person retaken and reincarcerated as provided in this chapter shall be confined according to the committed person's sentence for that portion of the committed person's term remaining unserved at the time of furlough, but subsequent furloughs, in the discretion of the director or designated agent, may be granted to a committed person during the life and in respect of sentence. [L 1987, c 338, pt of §3; am L 1997, c 383, §51]

Cross References

Interstate compact for the supervision of adult offenders, see chapter 353B.

" **§353-18 Director to fix committed persons' compensation.** The director, by rule, may classify, grade, and fix earnings to be paid to committed persons who may be confined in any correctional facility of the State. [L 1987, c 338, pt of §3]

" **§353-19 Compensation for labor or training by committed persons.** Every committed person, who is working within a state correctional facility or who is in such training or educational programs as the director or a designated agent pursuant to law prescribes, may be allowed such graduated sums of money as the director by policy determines. Any committed person, other than persons on work furlough, engaged in work, training, or education pursuant to this section or work pursuant to this chapter or chapter 354D shall not be considered an employee or in employment. [L 1987, c 338, pt of §3; am L 1990, c 341, §2; am L 2007, c 97, §1]

" **§353-20 Custody of moneys; accounts for committed persons, etc.** All sums collected under this chapter and any other authorized sources shall be deposited by the department into one or more accounts with one or more financial institutions opened by the department for the specific purpose of maintaining committed persons' funds. The department shall maintain accounts for each committed person to allow committed persons use of their own funds for approved expenses and purchases during incarceration. The director may designate a percentage of all funds earned by the committed person while in custody to be deposited and held in a nonspendable account for the purpose of providing funds for that same committed person upon release from custody. The structure of these accounts shall be designed so that all funds deposited by or for a committed person shall be credited to the accounts. Accounts maintained by the department for committed persons shall not bear interest. No interest of any kind shall be paid to a committed person on any account maintained by the department for the committed person. The department shall provide quarterly accounting statements to all committed persons held in custody for over one quarter of the year. The department shall conduct annual audits on all committed persons' accounts. [L 1987, c 338, pt of §3; am L 2009, c 75, §1]

Note

The 2009 amendment applies to all committed persons' accounts established before and after May 26, 2009. L 2009, c 75, §2.

Case Notes

The plain language of this section expressly authorized the department of public safety to maintain only one individual trust account for prisoners pertaining to sums collected while committed; department violated this section where it maintained

two accounts with respect to prisoner, one of which restricted withdrawals for purposes determined by the department, and the interest that accrued on prisoner's accounts must be paid on that account. 119 H. 275, 196 P.3d 277 (2008).

" **§353-21 Withdrawals; forfeitures; etc.** The department shall allow any committed person under its direction to draw from funds in the committed person's account such amounts and for such purpose as it may deem proper. Upon the parole or discharge of a committed person, the department shall pay the committed person any money to which the committed person may be entitled under this chapter. Upon the death of any committed person during incarceration, all funds to which the committed person may have been entitled shall be distributed as provided by law in the same manner as the committed person's other property; provided that the funds shall first be used to satisfy any restitution order in that committed person's name or any reimbursements to the State the director has determined is owed by the committed person. [L 1987, c 338, pt of §3]

" **§353-22 Earnings exempt from garnishment, etc.** No moneys earned by a committed person and held by the department, to any amount whatsoever, shall be subject to garnishment, levy, or any like process of attachment for any cause or claim against the committed person, except as provided for in section 353-22.5. [L 1987, c 338, pt of §3; am L 1993, c 294, §2; am L 1996, c 189, §3]

" **[§353-22.5] Garnishment to cover nonbudgeted costs.** All moneys received by windfall or earned by a committed person shall be subject to garnishment, levy, or any like process of attachment by the director for a cause of action or claim against the committed person in the following order of priority:

- (1) Restitution to victims;
- (2) Child support payments by order of the court;
- (3) Replacement costs for any facility damage that may have been caused by the committed person and all other costs associated with the facility damage; and
- (4) Reimbursement for the extraordinary cost of photocopying or postage which has been advanced by the department for litigation purposes.

All moneys collected by the department pursuant to paragraph (3) or (4) shall be used to reimburse, in whole or in part, the nonbudgeted costs and expenses. [L 1996, c 189, §2]

" **§353-22.6 Victim restitution.** *[Repeal and reenactment of section on July 1, 2018, by L 2013, c 67, §2 deleted by L 2016,*

c 231, §69.] The director of public safety shall enforce victim restitution orders against all moneys earned by the inmate or deposited or credited to the inmate's individual account while incarcerated. Notwithstanding any law or order to the contrary, the amount deducted shall be twenty-five per cent of the 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. [L 1987, c 127, §1 and c 338, §10; am L 1988, c 141, §32; am L 1989, c 211, §8; am L 2012, c 139, §§10, 14(4); am L 2016, c 231, §61]

" **§353-22.8 Orders for payment of child support.** The director of public safety shall comply with orders for payment of child support from inmate individual trust accounts to the child support enforcement agency pursuant to section 571-52, 571-52.2, 576D-14, or 576E-16, this section, or chapter 576B. When the total of all new deposits and credits to the inmate's individual trust account in a given month is less than or equal to \$15, no payment shall be made for child support that month out of the trust account. When the total of all new deposits and credits to the inmate's individual trust account in a given month exceeds \$15, no more than thirty per cent of the total new deposit or credit to the individual's trust account shall be paid for child support out of the account for that month. [L 1993, c 294, §1; am L 1997, c 293, §18; am L 1998, c 11, §19]

" **§353-23 Disposition of property subject to action for damages.** No disposition of any estate, either by will or otherwise, after the arrest for crime of which the committed person was convicted, whether the sentence is for life or otherwise, shall have any advantage or preference over the claim of any person entitled to damages for a private injury committed by the criminal, unless the disposition was made for a valuable and equivalent consideration to a person ignorant of the arrest. [L 1987, c 338, pt of §3]

" **§353-24 Conservators of committed persons, appointed when.** Whenever a person is sentenced to imprisonment for any felony for a term exceeding one year, any judge having probate powers, upon application, may appoint a conservator to have the care and management of the committed person's estate, real and personal, during the term of imprisonment or until the committed person is finally discharged from the sentence. The letters of conservatorship shall be revoked by the pardon or final

discharge of the committed person, but the revocation shall not invalidate legal acts done by the conservator. [L 1987, c 338, pt of §3; am L 2004, c 161, §11]

" **§353-25 Powers and duties of conservator.** Every conservator appointed for any committed person shall pay all the just debts due from the committed person out of the committed person's personal estate, if sufficient, and if not, out of the committed person's real estate, upon obtaining an order for the sale thereof from the judge. The conservator shall also settle all accounts of the committed person, and demand, sue for, and receive all debts due to the committed person, and, with the approbation of the judge, may compound for the same and give a discharge to the debtor. The conservator shall appear for and represent the ward in all legal suits and proceedings, except when another person is appointed for that purpose.

The conservator shall have all the rights and duties, as well as the responsibilities, respecting the management and disposal of the committed person's estate, as appertain to the guardian or conservator of a minor or insane person. The conservator shall manage the estate without waste, and the profits thereof, so far as may be necessary, for the comfortable and suitable maintenance of the committed person's family, if there be any, and if the profits are insufficient for that purpose, may sell the real estate and apply the proceeds thereto, upon obtaining the license of the judge. [L 1987, c 338, pt of §3; am L 2004, c 161, §12; am L 2005, c 22, §21]

" **§353-26 Removal of conservator.** The conservator may be removed, and another conservator appointed in the former conservator's place, whenever the judge thinks there is just cause for removal. [L 1987, c 338, pt of §3; am L 2004, c 161, §13; am L 2005, c 22, §22]

" **§353-27 Compensation; expenses.** Every conservator shall be compensated for the conservator's services in an amount the judge before whom the ward's accounts are settled considers just and proper. The conservator shall also be allowed the amount of reasonable expenses. [L 1987, c 338, pt of §3; am L 2004, c 161, §14]

" **§353-28 Property given to committed persons.** All property given or in any manner whatsoever accruing to a committed person, shall vest in the committed person's conservator, if the committed person is sentenced for a term of years, to be disposed of in the same manner as the committed person's other property; or if the committed person is sentenced for life,

shall vest in the committed person's heirs or legatees; provided that any funds accumulated by the committed person and placed into an account as provided under section 353-20 shall be under the control and management of the director. [L 1987, c 338, pt of §3; am L 2004, c 161, §15]

" **[§353-28.5] Visits from family members.** (a) Family members shall be allowed to visit an inmate at any state correctional facility during official visiting hours.

(b) A visit from a family member shall be preapproved and prescheduled. Notwithstanding any other law to the contrary, preapproved and prescheduled visits for which family members have incurred substantial costs, including but not limited to travel from a neighbor island or the mainland, shall not be canceled due to staff absenteeism or any nonemergency situation.

(c) The department shall develop internal policies and procedures consistent with this section.

(d) For the purposes of this section, "family members" means persons who are related to each other by blood, marriage, adoption, or legal guardianship, or as reciprocal beneficiaries. [L 2006, c 318, §2]

" **§353-29 What officials may visit.** The governor, lieutenant governor, attorney general, director of finance, director of health, comptroller, judges of all state courts, the ombudsman, the mayors of the counties, members of the legislature, and members of county councils shall be allowed at suitable hours to visit any state correctional facility. [L 1987, c 338, pt of §3]

" **§353-30 Others by permission.** Only official visitors shall be allowed to visit any state correctional facility or to have any oral or written communication with a committed person, unless with the written permission of the administrator of the correctional facility or the director. No visitor shall deliver to or receive from any committed person any letter or message except with permission granted by the administrator of a state correctional facility pursuant to rules adopted by the director or facility administrator. Unauthorized communications, passing of documents, or visiting shall be a class C felony. [L 1987, c 338, pt of §3]

" **§353-31 Revolving funds for correctional facility stores.** Subject to the approval of the department of budget and finance, a special revolving fund for each correctional facility store may be established for the purpose of purchasing items to be resold to inmates. All moneys received from the resale of

allowable items in correctional facility stores shall be deposited in the revolving fund for each such store. The proceeds of each fund shall be expended at the discretion of the director, but shall be used only for purchasing items to be resold to inmates and for purchasing of other goods or services for inmate benefits and needs. [L 1987, c 338, pt of §3]

" **[§353-32] Gifts.** (a) Notwithstanding any other law to the contrary, the department may receive, use, manage, and invest moneys or property, real, personal, or mixed, which may be given, bequeathed, devised, or in any other manner provided from sources other than the legislature or the federal government, for any purpose authorized by this chapter and not inconsistent with any terms or conditions imposed by the donor, subsection (b), or chapter 84.

(b) A gift of money shall be deposited by the director of finance in a separate account in the state treasury and expended in accordance with law and any terms and conditions that may pertain to the gift. Unless otherwise specified as a term or condition, the department may convert a gift of property into money. Income derived from property or the conversion of property may be used to pay for the storage, handling, and distribution of other properties held by the department.

(c) All expenditures made pursuant to this section shall be subject to the approval of the director of public safety.

(d) The department shall maintain records of each gift, the essential facts of the management thereof, details relating to expenditures of all moneys made pursuant to this section, and the current disposition, use, and condition of each gifted property held by the department. This information shall be compiled and transmitted annually to the legislature and the governor, and shall be made available to the general public free of charge. [L 1992, c 100, §1]

" **§353-33 REPEALED.** L 2008, c 64, §1.

" **§353-34 Probation services fee; assessment.** Any defendant received for supervision pursuant to chapter 353B shall be assessed a probation services fee pursuant to section 706-648. [L 2000, c 205, §1; am L 2004, c 78, §1]

" **[§353-35] Incarcerated parents; data collection.** Beginning on July 1, 2016, the department shall collect the following data upon intake of offenders into the correctional system:

- (1) The number of offenders who are parents;

- (2) The number of children under the age of eighteen, per offender who is a parent; and
- (3) Any other information about incarcerated parents and their children that the department deems useful to facilitate the provision of services to incarcerated parents or their children. [L 2015, c 16, §2]

Note

Forms or questions to ask offenders; plan for management of data collected and public disclosure of data. L 2015, c 16, §3.

" **[§353-36] Release of misdemeanants to prevent overcrowding.** *[Section repealed July 1, 2020. L 2016, c 217, §8.]* (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 353-37, "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 misdemeanor 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 misdemeanor pursuant to this section shall not operate to dismiss or otherwise terminate any charges then pending against the misdemeanor.

(d) The director shall notify the court where the case is assigned and the prosecuting attorney of the release of any misdemeanor 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. [L 2016, c 217, pt of §1]

Note

Section applies only to persons charged with offenses subject to sentencing in §706-663, on or after July 1, 2016. L 2016, c 217, §4.

" **[§353-37] Terms and conditions of release; violations; sanctions.** [*Section repealed July 1, 2020. L 2016, c 217, §8.*]

(a) A misdemeanor released pursuant to section 353-36 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. [L 2016, c 217, pt of §1]

Note

Section applies only to persons charged with offenses subject to sentencing in §706-663, on or after July 1, 2016. L 2016, c 217, §4.

"PART II. PAROLES AND PARDONS

Cross References

Administration of Hawaii paroling authority placed in department of public safety, see §26-14.6.

§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 or the chief justice's designee, the director or the director's designee, the president of the Hawaii State Bar Association or the president's designee, 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 or the president's designee. 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 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. [L 1931, c 129, pt of §1; RL 1935, §6413; am L 1939, c 203, pt of §6; RL 1945, §3914; RL 1955, §83-60; am L Sp 1959 2d, c 1, §5; HRS §353-61; am L 1976, c 92, §2; am L 1987, c 338, §4; gen ch 1992; am L 2004, c 24, §1; am L 2006, c 38, §9; am L 2008, c 10, §1; am L 2011, c 16, §2; am L 2012, c 139, §5; am L 2013, c 117, §1]

Cross References

Administrative control, see §26-35.

Sex offender treatment program, see chapter 353E.

" **§353-62 Hawaii paroling authority; responsibilities and duties; operations; records, reports, staff.** (a) In addition to any other responsibility or duty prescribed by law for the Hawaii paroling authority, the paroling authority shall:

- (1) Serve as the central paroling authority for the State;
 - (2) In selecting individuals for parole, consider for parole all committed persons, except in cases where the penalty of life imprisonment not subject to parole has been imposed, regardless of the nature of the offense committed;
 - (3) Determine the time at which parole shall be granted to any eligible individual as that time at which maximum benefits of the correctional institutions to the individual have been reached and the element of risk to the community is minimal;
 - (4) Establish rules of operation to determine conditions of parole applicable to any individual granted parole;
 - (5) Provide continuing custody, control, and supervision of paroled individuals;
 - (6) Revoke or suspend parole and provide for the authorization of return to a correctional institution for any individual who violates parole or any condition of parole when, in the opinion of the Hawaii paroling authority, the violation presents a risk to community safety or a significant deviation from any condition of parole;
 - (7) Discharge an individual from parole when supervision is no longer needed;
 - (8) Interpret the parole program to the public in order to develop a broad base of public understanding and support; and
 - (9) Recommend to the legislature sound parole legislation and recommend to the governor sound parole administration.
- (b) In its operations, the paroling authority shall:
- (1) Keep and maintain a record of all meetings and proceedings;
 - (2) Make public no more than thirty days after a parole release hearing the following information:
 - (A) The prisoner's name; and
 - (B) Whether the parole request was approved or denied;
 - (3) Send a detailed report of its operations to the governor every three months;
 - (4) In promulgating rules, conform to chapter 91;

- (5) Allow each prisoner a hearing before a panel of three of its members, which shall act by a majority of the panel members; provided that if it is determined immediately preceding or during the course of a hearing that a sitting panel member must be recused due to a conflict of interest or illness, the panel may proceed with two members; and
- (6) Appoint an administrative secretary and such other clerical and other assistants as may be necessary within the limits of available appropriations, subject to any applicable salary classification and civil service schedules, laws, and rules. [L 1931, c 129, pt of §1; RL 1935, §6414; am L 1939, c 203, pt of §6; am L 1941, c 146, §1; RL 1945, §3915; RL 1955, §83-61; HRS §353-62; am L 1976, c 92, §3; am L 1987, c 338, §5; am L 1988, c 141, §33; am L 2013, c 117, §2]

Case Notes

Neither chapter 706 nor chapter 353 prohibits the Hawaii paroling authority from setting a prisoner's minimum term at a period equal to his or her maximum sentence. 97 H. 183, 35 P.3d 210 (2001).

As no Hawaii statute governing parole requires a parolee's parole to be automatically revoked upon the parolee's conviction and sentence to imprisonment for a crime committed while on parole, and this section appears to vest Hawaii paroling authority with discretion to revoke parole, parolee's due process right violated when authority summarily revoked parole without giving parolee a final revocation hearing. 88 H. 229 (App.), 965 P.2d 162 (1998).

" **§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 four members shall serve on a part-time basis. Effective July 1, 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 that shall be paid from appropriations provided the authority for such purposes, on vouchers approved by the director of public safety. [L 1931, c 129, pt of §1; RL 1935, §6415; am L 1939, c 203, §6, par 4; RL 1945, §3916; RL 1955, §83-62; am L 1965, c 58, §1; HRS §353-63; am L 1976, c 92, §4; am L 1982, c 129, §13; am L 1986, c 128, §12; am L 1987, c 338, §10; am L 1989, c 211, §8, c 229, §1, and c 329, §10; am L 1993, c 6, §13; am L 1994, c 156, §2; am L 2005, c 226, §10; am L 2012, c 139, §6]

" **[§353-63.5] Intermediate sanctions; eligibility; criteria and conditions.** (a) The Hawaii paroling authority shall implement alternative programs that place, control, supervise, and treat selected parolees in lieu of incarceration.

(b) The authority may impose participation in alternative programs as a condition of parole or as an amended condition of parole.

(c) As used in this section, "alternative programs" mean programs which, from time to time, are created and funded by legislative appropriation or federal grant naming the Hawaii paroling authority or the department of public safety on behalf of the Hawaii paroling authority as the expending agency and which are intended to provide an alternative to incarceration. Alternative programs may include:

- (1) Home detention, curfew using electronic monitoring and surveillance, or both;
- (2) Intensive supervision, residential supervision, work-furlough, and structured educational or vocational programs;
- (3) Therapeutic residential and nonresidential programs; and
- (4) Similar programs created and designated as alternative programs by the legislature, the chairperson of the Hawaii paroling authority, or the director of public safety for parolees who do not pose significant risks to the community. [L Sp 1995, c 25, §3]

Cross References

For similar provisions, see §§353-10.5 and 706-605.1.

" **§353-64 Committed persons paroled.** Any committed person confined in any state correctional facility in execution of any sentence imposed upon the committed person, except in cases where the penalty of life imprisonment not subject to parole has

been imposed, shall be subject to parole in the manner and form as set forth in this part; provided that the committed person shall be paroled in the county where the committed person had a permanent residence or occupation or employment prior to incarceration, unless:

- (1) The committed person will reside in a county in which the population exceeds eight-hundred thousand persons;
- (2) The committed person will be released for immediate departure from the State; or
- (3) The committed person shall be released to the 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; provided that to be considered for parole to another county in the State, the committed person shall provide a written request to the department not less than six months prior to the expiration of the committed person's longest minimum sentence.

Provided further that to be eligible for parole, the committed person, if the person is determined by the department to be suitable for participation, must have been a participant in an academic, vocational education, or prison industry program authorized by the department and must have been involved in or completed the program to the satisfaction of the department; and provided further that this precondition for parole shall not apply if the committed person is in a correctional facility where academic, vocational education, and prison industry programs or facilities are not available. A grant of parole shall not be subject to acceptance by the committed person. [L 1917, c 103, §1; RL 1925, §1560; am L 1931, c 126, §1; RL 1935, §6435; RL 1945, §3958; am L 1955, c 239, §1; RL 1955, §83-63; HRS §353-64; gen ch 1985; am L 1988, c 147, §1; am L 1993, c 101, §1 and c 201, §1; am L Sp 2007, c 8, §14]

Cross References

Comprehensive offender reentry system, see chapter 353H.
Minimum term, setting of, see §706-669.
Parole procedure, see §706-670.

Case Notes

While on parole, prisoner still in legal custody and deemed to be serving sentence imposed. 24 H. 247 (1918).

Neither chapter 706 nor chapter 353 prohibits the Hawaii paroling authority from setting a prisoner's minimum term at a period equal to his or her maximum sentence. 97 H. 183, 35 P.3d 210 (2001).

Cited: 26 H. 764, 770 (1923); 60 H. 314, 588 P.2d 929 (1979).

" **§353-65 Paroles; rules.** The Hawaii paroling authority may establish rules, with the approval of the governor and the director of public safety not inconsistent with this part, under which any prisoner may be paroled but shall remain, while on parole, in the legal custody and under the control of the paroling authority, and be subject, at any time until the expiration of the term for which the prisoner was sentenced, to be taken back within the enclosure of the prison. The rules shall have the force and effect of law. Full power, subject to this part, to enforce the rules, to grant, and to revoke paroles is conferred upon the paroling authority. The power to retake and reimprison a paroled prisoner is conferred upon the administrative secretary or the administrative secretary's designee, who may issue a warrant authorizing all of the officers named therein to arrest and return to actual custody any paroled prisoner. The superintendent of Hawaii state prison, the chief of police of each county and all police officers of the State or of any county, and all prison officers shall execute any such order in like manner as ordinary criminal process.

If any prisoner so paroled leaves the State without permission from the paroling authority, the prisoner shall be deemed to be an escaped prisoner, and may be arrested as such. [L 1917, c 103, §2; RL 1925, §1561; am L 1931, c 126, §2; am L 1932 1st, c 17, §8; RL 1935, §6454; am L 1939, c 203, pt of §6; RL 1945, §3959; RL 1955, §83-64; am L 1957, c 308, §1; am L 1963, c 34, §§1, 2; am L 1965, c 96, §57; HRS §353-65; am L 1969, c 208, §1; am L 1976, c 92, pt of §8; gen ch 1985; am L 1987, c 338, §10; am L 1989, c 211, §8; am L 2003, c 7, §1]

Cross References

Rulemaking, see chapter 91.

" **[§353-65.5] Reports to county clerk.** Whenever the paroling authority grants or revokes parole for any citizen of eighteen years of age or over, the paroling authority, in each case, shall make and promptly transmit to the clerk of the county in which the citizen resides, a certificate showing the fact of the granting or revoking of parole within twenty days

after the granting or revoking of parole. The certificate shall include:

- (1) The name, date of birth, and social security number of the citizen and any known aliases;
- (2) The citizen's address or last known address; and
- (3) The date of the grant or revocation of parole. [L 2006, c 253, §1]

" **§353-66 Terms and conditions of parole; suspension and revocation.** (a) Every parole granted under this part to any prisoner shall be subject to the express condition, to be set forth in the official written notification of parole to the prisoner, but to be binding upon the prisoner in any event, that all or any portion of the prisoner's credits earned or to be earned may be forfeited by order of the Hawaii paroling authority in the event that the prisoner breaks the prisoner's parole or violates any law of the State or rule of the paroling authority or any of the terms or conditions of the prisoner's parole.

(b) No parole shall be revoked and no credits forfeited without cause, which cause must be stated in the order revoking the parole, or forfeiting the credits after notice to the paroled prisoner of the paroled prisoner's alleged offense and an opportunity to be heard; provided that when a person is convicted in the State of a crime committed while on parole and is sentenced to imprisonment, or when it is shown by personal investigation that a parolee has left the State without permission from the paroling authority and due effort is made to reach the parolee by registered mail directed to the parolee's last known address, no hearing shall be required to revoke the parolee's parole; and provided further that when any duly licensed psychiatrist or licensed psychologist finds that continuance on parole will not be in the best interests of a parolee or the community, the paroling authority, within the limitations of the sentence imposed, shall order the detention and treatment of the prisoner until such time as the prisoner shall be found by any duly licensed psychiatrist or licensed psychologist to be eligible for continuance on parole.

(c) If any paroled prisoner leaves the State without permission from the paroling authority, or if the whereabouts of any paroled prisoner is not known to the paroling authority because of the neglect or failure of the prisoner to so inform it, the paroling authority may order the parole suspended pending apprehension. From and after the suspension of the parole of any paroled prisoner and until the paroled prisoner's return to custody, the paroled prisoner shall be deemed an escapee and a fugitive from justice, and no part of the time

during which the paroled prisoner is an escapee and a fugitive from justice shall be part of the paroled prisoner's term.

(d) The paroling authority may at any time order the arrest and temporary return to custody of any paroled prisoner, as provided in section 353-65, for the purpose of ascertaining whether or not there is sufficient cause to warrant the paroled prisoner's reimprisonment or the revoking of the paroled prisoner's parole or other action provided for by this part.

(e) *[Repeal and reenactment on July 1, 2018. L 2013, c 67, §2; L 2016, c 231, §69.]* 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 offense under chapter 134, 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 locations 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 imprisonment 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 maximum terms of imprisonment.

(f) The Hawaii paroling authority may require a paroled prisoner to undergo and complete a substance abuse treatment program when the paroled prisoner has committed a violation of the terms and conditions of parole involving possession or use, not including to distribute or manufacture as defined in section 712-1240, of any dangerous drug, detrimental drug, harmful drug, intoxicating compound, marijuana, or marijuana concentrate, as defined in section 712-1240, unlawful methamphetamine

trafficking as provided in section 712-1240.6, or involving possession or use of drug paraphernalia under section 329-43.5. If the paroled prisoner fails to complete the substance abuse treatment program or the Hawaii paroling authority determines that the paroled prisoner cannot benefit from any substance abuse treatment program, the paroled prisoner shall be subject to revocation of parole and return to incarceration. As a condition of parole, the Hawaii paroling authority may require the paroled prisoner to:

- (1) Be assessed by a certified substance abuse counselor for substance abuse dependency or abuse under the applicable Diagnostic and Statistical Manual and Addiction Severity Index;
- (2) Present a proposal to receive substance abuse treatment in accordance with the treatment plan prepared by a certified substance abuse counselor through a substance abuse treatment program that includes an identified source of payment for the treatment program;
- (3) Contribute to the cost of the substance abuse treatment program; and
- (4) Comply with any other terms and conditions for parole.

As used in this subsection, "substance abuse treatment program" means drug or substance abuse treatment services provided outside a correctional facility by a public, private, or nonprofit entity that specializes in treating persons who are diagnosed with having substance abuse or dependency and preferably employs licensed professionals or certified substance abuse counselors.

Nothing in this subsection shall be construed to give rise to a cause of action against the State, a state employee, or a treatment provider. [L 1917, c 103, §3; RL 1925, §1562; am L 1931, c 126, §3; RL 1945, §3960; am L 1949, c 13, §1; RL 1955, §83-65; am L 1957, c 308, §2; am L 1967, c 100, §1; HRS §353-66; am L 1976, c 92, pt of §8; gen ch 1985; am L 1988, c 305, §2; am L 2002, c 161, §4; am L 2004, c 44, §10; am L 2005, c 22, §23; am L 2012, c 139, §§7, 14(4); am L 2016, c 34, §1]

Note

The 2012 amendment applies to any individual on parole supervision on or after July 1, 2012. L 2012, c 139, §14(2). Section 712-1240.6 referred to in text is repealed.

Cross References

Hearings, see chapter 91.

Mailing, see §1-28.

Methamphetamine trafficking, see §§712-1240.7 to 712-1240.9.

Revocation hearing, see §706-670.

Case Notes

As §706-670 and this section can be given effect without conflict, §706-670(7) is not the "exclusive" law governing parole revocations, does not embrace the entire law on the subject, and does not repeal this section by implication. 88 H. 229 (App.), 965 P.2d 162 (1998).

The no-hearing requirement for revocation of parole does not only apply to convictions of violations of state law. 88 H. 229 (App.), 965 P.2d 162 (1998).

" **[§353-66.5] Suspension or revocation; arrest warrants arising from traffic violations.** In the event of suspension or revocation of parole, the Hawaii paroling authority shall inform the appropriate courts and arresting authorities of all outstanding traffic warrants issued against the parolee so that the warrants may be served on the parolee in a timely manner. [L 2006, c 308, §2]

Cross References

See also §604-7.2.

" **§353-67 Education as condition for paroles.** The Hawaii paroling authority may require, as a condition of parole, that a parolee further the parolee's education and training by taking occupational training courses or general education courses, or both, whenever such courses are deemed by the paroling authority to be capable of making a substantial contribution to the rehabilitation of the parolee. The paroling authority may in its discretion designate the educational institution or institutions the parolee is to attend and may pay the cost of tuition and other fees for said courses. [L 1965, c 119, §1; Supp, §83-65.5; HRS §353-67; am L 1969, c 112, §1; am L 1976, c 92, pt of §8; gen ch 1985]

" **§353-68 Parole, how initiated and granted.** (a) Paroles may be granted by the Hawaii paroling authority at any time after the prisoner has served the minimum term of imprisonment fixed according to law; provided that where a fine has also been imposed, which has not been paid, and if the prisoner has been imprisoned for at least thirty days, the paroling authority upon being satisfied that the prisoner has petitioned the court for

revocation of all or part of such fine pursuant to section 706-645, may nevertheless parole the prisoner without payment of the fine, either with or without the condition, subject to determination by the court under section 706-645, that while on such parole the prisoner make payment of the fine as the paroling authority deems proper under the circumstances. The proceedings to obtain parole may be initiated by the written recommendation of the superintendent to the paroling authority or may be initiated by the paroling authority without any such recommendation.

(b) The governor shall have like power to revoke the parole of any prisoner. The written authority of the governor shall likewise be sufficient to authorize any police officer to retake and return the prisoner to prison. The governor's written order revoking the parole shall have the same force and effect and be executed in like manner as the order of the chairperson of the paroling authority.

(c) The paroling authority shall act by majority of all its members in respect of all proceedings touching the parole of prisoners. [L 1931, c 126, §4; RL 1935, §6456; am L 1939, c 203, pt of §6; am L 1943, c 207, §2; RL 1945, §3961; RL 1955, §83-66; am L 1957, c 308, §3; am L 1963, c 34, §1; HRS §353-68; am L 1976, c 92, pt of §8; am L 1981, c 163, §1; gen ch 1985, 1993]

Cross References

Consequences of nonpayment of fine, see §706-644.

Parole procedure, see §706-670.

Case Notes

No due process liberty interest in parole is created under this section. 795 F. Supp. 1020 (1992).

Parole and minimum sentence under prior law. 28 H. 268 (1925).

" **§353-69 Parole when.** [*Repeal and reenactment on July 1, 2018. L 2013, c 67, §2.*] 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. [L 1917, c 103, §4; RL 1925, §1563; am L 1931, c 126, §5; RL 1935, §6457; RL 1945, §3962; RL 1955, §83-67; HRS §353-69; am L 1976, c 92, pt of §8; gen ch 1985; am L 2012, c 139, §§11, 14(4)]

Note

The repeal and reenactment note at this section in the main volume is amended to read as follows: "[Repeal and reenactment on July 1, 2018. L 2013, c 67, §2; L 2016, c 231, §69.]".

Case Notes

No due process liberty interest in parole is created under this section. 795 F. Supp. 1020 (1992).

" **§353-70 Final discharge.** Whenever, in its opinion, any paroled prisoner has given such evidence as is deemed reliable and trustworthy that the paroled prisoner will remain at liberty without violating the law and that the paroled prisoner's final release is not incompatible with the welfare of society, the Hawaii paroling authority may grant the prisoner a written discharge from further liability under the prisoner's sentence.

Any paroled prisoner who has been on parole for at least five years shall be brought before the paroling authority for purposes of consideration for final discharge and complete pardon. In the event the prisoner is not granted a final discharge and full pardon, the paroled prisoner shall be brought before the paroling authority for the aforementioned purposes annually thereafter.

Any person, who, while on parole, enters the military service of the United States, may, upon the person's honorable discharge therefrom, petition the paroling authority for a final discharge, and the paroling authority may consider the honorable discharge as grounds for granting a final discharge from parole and recommending to the governor a full pardon. [L 1917, c 103, §7; RL 1925, §1566; am L 1931, c 126, §7; RL 1945, §3963; am L 1949, c 2, §1; RL 1955, §83-68; am L 1957, c 308, §4; am L 1963, c 149, §1; HRS §353-70; am L 1976, c 92, pt of §8; gen ch 1985]

Cross References

Final unconditional release, see §706-670.

" **§353-71 Parole officer and assistant parole officers.** The Hawaii paroling authority may appoint and remove at pleasure a parole officer and assistant parole officers as may be necessary, who shall receive such compensation as shall be provided by law. The duties of the parole officer shall be as follows:

- (1) To keep a record of all paroled prisoners; to add from time to time thereafter information concerning the

employment and wages of each paroled prisoner, together with the name of the paroled prisoner's employer and such details concerning the paroled prisoner's health, conduct, and environment as may come to the attention of the parole officer either from reports made to the parole officer or through the parole officer's own personal investigation;

- (2) To receive reports from paroled prisoners as may be required by the rules and regulations of the paroling authority and to check such reports by personal investigations and by conferences with the employers of such prisoners and such other persons as can give information concerning the habits, work, and environment of such prisoners;
- (3) To investigate and keep informed upon the habits, work, wages, and environment of such prisoners, if any there be, as are not required to report to the parole officer;
- (4) To make such other investigations, secure such other information and data, perform such other duties and make such other reports, in addition to those which may be required by law, as may be required by the paroling authority;
- (5) To make a report once in each month to the paroling authority, together with such additional reports as the circumstances call for, concerning the prisoners on parole and their conduct and environment; and
- (6) As far as practicable, to assist in obtaining suitable employment for paroled prisoners and otherwise assist in rehabilitation of such paroled prisoners.

Each assistant parole officer shall have such of the powers and duties of the parole officer hereinabove provided for as shall be prescribed by the paroling authority. [L 1931, c 126, §8; RL 1935, §6459; am L 1939, c 203, pt of §6; RL 1945, §3964; RL 1955, §83-69; HRS §353-71; am L 1976, c 92, pt of §8; gen ch 1985]

" **§353-72 Pardons; reference to paroling authority.** The director of public safety and the Hawaii paroling authority shall consider every application for pardon which may be referred to them by the governor and shall furnish the governor, as soon as may be after such reference, all information possible concerning the prisoner, together with a recommendation as to the granting or refusing of the pardon. [L 1905, c 41, §5; am imp L 1911, c 5, §2; RL 1925, §1545; am L 1931, c 129, pt of §1; RL 1935, §§6410, 6419; RL 1945, §3965; RL 1955, §83-70; am L Sp

1959 2d, c 1, §20; HRS §353-72; am L 1976, c 92, pt of §8; am L 1987, c 338, §10; am L 1989, c 211, §8]

**"PART III. INTERSTATE PAROLE AND
PROBATION COMPACT--REPEALED**

§§353-81 and 353-82 REPEALED. L 2004, c 78, §3.

"PART IV. COUNTY JAILS--REPEALED

§§353-91 to 353-96 REPEALED. L 1973, c 179, §21.

"PART V. FEDERAL AND MILITARY PRISONERS, CUSTODY OF

§353-101 Authorization to director of public safety or the appropriate officer and the governor. The director of public safety, or the appropriate officer with the approval of the governor, is authorized for the State to enter into contracts with the director of the Bureau of Prisons or the appropriate officers of the United States for the imprisonment, subsistence, care, and proper employment of federal and military prisoners. The director of public safety or the appropriate officer shall be vested with such functions, powers, and duties which are necessary to carry out the foregoing purpose. [L Sp 1959 1st, c 3, §1; am L Sp 1959 2d, c 1, §20; Supp, §83-90; HRS §353-101; gen ch 1985; am L 1987, c 338, §10; am L 1989, c 211, §8]

" **§353-102 REPEALED.** L 1973, c 179, §21.

" **§353-103 Validity of existing contracts.** All existing contracts with the federal government relating to imprisonment, subsistence, care, and proper employment of federal and military prisoners are hereby ratified by the State and shall continue in effect until they expire by their own terms. This part shall not be construed to invalidate such contracts. [L Sp 1959 1st, c 3, §3; Supp, §83-92; HRS §353-103]

"[PART VI.] PREGNANT OFFENDERS; RESTRAINTS

[§353-121] Definitions. As used in this part:

"Labor" means the period of time before a birth during which contractions are of sufficient frequency, intensity, and duration to bring about effacement and progressive dilation of the cervix.

"Postpartum recovery" means:

- (1) The entire period a female is in a hospital, birthing center, or clinic after giving birth; and

- (2) An additional time period, if any, a treating physician determines is necessary for healing after the female leaves the hospital, birthing center, or clinic.

"Restraints" means anything used to control the movement of a person's body or limbs and includes:

- (1) Physical restraint; or
- (2) A mechanical device, including metal handcuffs, plastic ties, ankle restraints, leather cuffs, other hospital-type restraints, tasers, or batons.

"Transport" means the conveyance, by any means, of a committed person from the correctional facility to another location, including travel to and from a transport vehicle. [L 2011, c 174, pt of §1]

" **[§353-122] Limitation on use of restraints.** (a) While transporting, no restraints of any kind may be used on any committed female:

- (1) During the third trimester of her pregnancy;
- (2) During postpartum recovery; or
- (3) During any portion of her pregnancy, if her physician so orders;

except in extraordinary circumstances.

(b) While the pregnant female is in labor or in childbirth no restraints of any kind shall be used. Nothing in this section affects the use of hospital restraints requested for the medical safety of the patient by a treating physician.

(c) Any restraints used on a pregnant female shall be the least restrictive available and the most reasonable under the circumstances, but in no case shall leg irons or waist chains be used on any pregnant female.

(d) No correctional personnel shall be present in the room during the pregnant female's labor or childbirth, unless specifically requested by medical personnel. If the correctional personnel's presence is requested by medical personnel, the correctional personnel shall be female, if practicable.

(e) If the doctor, nurse, or other health professional treating the pregnant female requests that restraints not be used, the corrections officer accompanying the pregnant female shall immediately remove all restraints.

(f) For the purpose of this section, "extraordinary circumstances" exist where a corrections officer makes an individualized determination that restraints are necessary to prevent an incarcerated pregnant female from escaping or injuring herself, medical or correctional personnel, or others.

If a corrections officer determines that extraordinary circumstances exist and restraints are used, the corrections officer shall fully document in writing the facts upon which a finding of extraordinary circumstances was based. The corrections officer shall also include the kind of restraints used and the reasons those restraints were considered the most reasonable and least restrictive available under the circumstances. [L 2011, c 174, pt of §1]

" **[§353-123] Enforcement.** (a) The director shall provide information relating to the requirements of this part to all medical and nonmedical staff and correctional personnel who are involved in the transportation or supervision of female offenders who are pregnant or in postpartum recovery and other staff as the director deems appropriate.

(b) The director shall provide notice of the requirements of this part to any female offender who is pregnant or in postpartum recovery at the time that the department assumes custody of the female offender. Additional notice shall be posted in conspicuous locations in any appropriate correctional facility, including the locations in which medical care is provided within the facility. Any treating physician, midwife, or nurse of a female offender who is pregnant or in postpartum recovery shall be informed of the requirements of this part. [L 2011, c 174, pt of §1]

"[PART VII.] **AUTOMATED VICTIM INFORMATION AND NOTIFICATION SYSTEM**

[§353-131] Definitions. For purposes of this part:

"Offender" means a person in the custody of the department of public safety or the Hawaii paroling authority but does not include juveniles under the jurisdiction of the family court.

"System" means the statewide automated victim information and notification system.

"Victim" means a person against whom a crime has been committed by the offender and includes, in homicide cases, surviving immediate family members. [L 2012, c 190, pt of §1]

" **[§353-132] System; requirements.** (a) The department shall establish a statewide automated victim information and notification system to:

- (1) Automatically notify a registered victim or concerned member of the community, via the person's choice of telephone, text message, or electronic mail transmission when the offender who is in the custody of the department:

- (A) Is transferred or assigned to another facility;
 - (B) Is transferred to the custody of another agency outside the State;
 - (C) Is released on temporary leave or for other reasons;
 - (D) Is discharged; or
 - (E) Has escaped;
- (2) Automatically notify a registered victim or concerned member of the community via the person's choice of telephone, text message, or electronic mail transmission when:
- (A) The offender has an upcoming parole hearing; or
 - (B) There is a change in the offender's parole status, including a change in the offender's supervision status;
- (3) Permit a victim or concerned member of the community to receive the most recent status report for the offender in the custody of the department by calling the system on a toll-free telephone number, as well as by accessing the system via a public website;
- (4) Provide all victims or concerned members of the community calling the system with the option to receive live operator assistance with the system on a twenty-four-hours per day, three-hundred-sixty-five-days per year basis; and
- (5) Permit a victim or a concerned member of the community to register or update the person's registration information for the system by calling a toll-free telephone number or accessing a public website.
- (b) The prosecuting agency shall notify the victim of the victim's right to register in the system. It shall be the responsibility of the victim to register with the system. [L 2012, c 190, pt of §1]

Note

L 2012, c 190, §4 provides:

"SECTION 4. The department of public safety shall continue to operate the statewide automated victim information and notification system pursuant to the funding structure under which it operated on June 30, 2012, which may include the use of federal funds, until such time as the automated victim information and notification system special fund has accumulated sufficient moneys to carry out the purposes of this Act."

" **[\$353-133] Satisfaction of victims' rights to notification.** Participation in the system and making offender

data available on a timely basis to the system shall be deemed to satisfy the obligations of:

- (1) The department to notify the victim of changes in the offender's custodial status pursuant to section 801D-4(a)(7); and
- (2) The police and prosecuting attorney to notify the victim of the offender's release from custody pursuant to section 801D-4(a)(1). [L 2012, c 190, pt of §1]

" **[\$353-134] Compliance by department; no cause of action.** The department shall ensure that the offender information contained within the system is updated on a regular basis sufficient to timely notify a victim or a concerned member of the community of the offender's release, discharge, or escape. However, failure of the system to provide notice to the victim or a concerned member of the community shall not establish a separate cause of action by the victim or a concerned member of the community against the State, any county, or any state or county agency, officer, or employee. [L 2012, c 190, pt of §1]

" **[\$353-135] Law enforcement cooperation.** The attorney general, and the chief of police and prosecuting attorney of each county, shall cooperate with the department in establishing and maintaining the system. [L 2012, c 190, pt of §1]

" **[\$353-136] Automated victim information and notification system special fund; authorization of payment.** (a) There is established a special fund to be known as the automated victim information and notification system special fund, to be administered by the department. Interest and investment earnings credited to the assets of the fund shall become part of the fund. Any remaining balance in the fund at the end of any fiscal year shall be carried over to the next fiscal year.

(b) Any item purchased by an in-state or out-of-state inmate from a correctional facility commissary shall be subject to a four per cent surcharge on the item's price. The proceeds from the surcharge shall be deposited into the automated victim information and notification system special fund.

(c) All proceeds or revenues that are derived from any commission that is realized pursuant to a telephone service agreement executed by the department for the provision of telephone services for inmates shall be deposited into the automated victim information and notification system special fund.

(d) Moneys received pursuant to subsections (b) and (c) shall be used for the development and operating expenses,

including salaries and benefits of positions as authorized by the legislature, of the system.

(e) The sum total of all moneys expended for development and operating expenses, including salaries and benefits of positions as authorized by the legislature, shall not exceed the special fund ceiling related to the fund established by the legislature; provided that the total moneys expended for these purposes shall not exceed \$600,000 in any one fiscal year.

(f) Federal funds shall not be transferred to, or deposited into, the automated victim information and notification system special fund. [L 2012, c 190, pt of §1]

" **[\$353-137] Automated victim information and notification system governance committee.** (a) There is established within the department of public safety, an automated victim information and notification system governance committee. The members of the governance committee shall be appointed by the director of public safety from a list submitted by the governance committee; provided that the initial members of the committee shall be selected by the director from a list of members provided by the statewide automated victim information and notification governance committee currently serving in that capacity under a grant from the federal Bureau of Justice Assistance establishing the victim notification system.

(b) The terms of the members shall be for four years and shall commence on July 1 and expire on June 30; provided that the governance committee may elect to reduce the terms of those initially appointed so as to provide, as nearly as can be, for the expiration of an equal number of terms at intervals of one year. No person shall be appointed consecutively to more than two terms on the governance committee; provided that membership shall not exceed eight consecutive years. Any member whose term has expired and who is not disqualified for membership under this subsection may continue in office as a holdover member until a successor is nominated and appointed; provided that a holdover member shall not hold office beyond the end of the second regular legislative session following the expiration of the member's term of office.

(c) A vacancy occurring in the membership of the governance committee during a term shall be filled for the unexpired term thereof as provided in subsection (a). The director of public safety may remove or suspend for cause any member after due notice and public hearing.

(d) The governance committee members shall include:

(1) A victim;

(2) One representative from a victim assistance program in each county;

- (3) One representative from the police department of each county; and
- (4) One representative from each of the following:
 - (A) Mothers Against Drunk Driving shall be requested to serve;
 - (B) The Hawaii State Coalition Against Domestic Violence shall be requested to serve;
 - (C) Sex Abuse Treatment Center shall be requested to serve;
 - (D) Crime victim compensation commission;
 - (E) The Hawaii paroling authority;
 - (F) The judiciary;
 - (G) The crime prevention and justice assistance division of the department of the attorney general; and
 - (H) The information technology section of the department.

The committee members shall elect a member who shall serve as the chairperson.

(e) The governance committee may advise the department on the following issues:

- (1) The implementation and operation of the system;
- (2) The establishment of performance measures;
- (3) Specifications and configuration parameters for the operation of the system;
- (4) Management of the system; and
- (5) Policies and procedures governing the use of the system, including policies to safeguard the safety, confidentiality, and autonomy of victims.

(f) Meetings of the governance committee shall be held on a quarterly basis during the system's first year of implementation and no less than twice a year thereafter.

(g) The members of the governance committee shall serve without compensation but shall be reimbursed for expenses, including travel expenses, necessary for the performance of their duties.

(h) Members of the governance committee acting in good faith and within the scope of their duties under this chapter shall be immune from any civil or criminal liability arising from these acts, except where the member's conduct would constitute gross negligence, wilful and wanton misconduct, or intentional misconduct. [L 2012, c 190, pt of §1]