

CHAPTER 353C
PUBLIC SAFETY

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Note

Certain positions in the department are exempt from the civil service requirements of chapter 76, for three calendar years commencing on July 1, 2016, unless extended by legislative act. L 2016, c 79, §3.

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.

Reentry pilot project for nonviolent, low-risk drug offenders; reports to 2015-2016 legislature (repealed June 30, 2016). L 2014, c 149; L 2015, c 126, §26.

State law enforcement memorial. L 2011, c 14.

Cross References

Controlled substances and narcotics enforcement, see chapter 329.

Forensic identification, see chapter 844D.

Medical use of marijuana, see §§329-121 to 329-128.

Sex offender treatment program, see chapter 353E.

" **[\$353C-1] Definitions.** Whenever used in this chapter, unless the context otherwise requires:

"Department" means the department of public safety.

"Director" means the director of public safety. [L 1989, c 211, pt of §6]

" **§353C-2 Director of public safety; powers and duties.**

[(a)] The director of public safety shall administer the public safety programs of the department of public safety and shall be responsible for the formulation and implementation of state goals and objectives for correctional and law enforcement programs, including ensuring that correctional facilities and correctional services meet the present and future needs of persons committed to the correctional facilities. In the administration of these programs, the director may:

- (1) Preserve the public peace, prevent crime, detect and arrest offenders against the law, protect the rights of persons and property, and enforce and prevent violation of all laws and administrative rules of the State as the director deems to be necessary or desirable or upon request, to assist other state officers or agencies that have primary administrative responsibility over specific subject matters or programs;

- (2) Train, equip, maintain, and supervise the force of public safety officers, including law enforcement and correctional personnel, and other employees of the department;
- (3) Serve process both in civil and criminal proceedings;
- (4) Perform other duties as may be required by law;
- (5) Adopt, pursuant to chapter 91, rules that are necessary or desirable for the administration of public safety programs; and
- (6) Enter into contracts in behalf of the department and take all actions deemed necessary and appropriate for the proper and efficient administration of the department.

[(b)] The department of public safety shall report to the legislature not later than twenty days prior to the commencement of the 2008 regular session, and every session thereafter, with its achievements, continuing improvements, and ongoing problems in providing the appropriate mental health care to committed persons under its jurisdiction. [L 1989, c 211, pt of §6; am L 1991, c 151, §3; am L 2007, c 144, §4]

Revision Note

L 2007, c 144, §4 was codified to this section pursuant to §23G-15.

Attorney General Opinions

Full-time investigators of the department of public safety's narcotics enforcement division qualify as law enforcement officers for purposes of excluding personal use value of state vehicle from investigator's gross income. Att. Gen. Op. 91-3.

" **[§353C-3] Deputy directors; appointment.** The director shall appoint, without regard to chapter 76, three deputy directors to serve at the director's pleasure. Unless otherwise assigned by the director, one deputy director shall oversee the correctional programs and facilities of the department, one deputy director shall oversee the law enforcement programs of the department, and one deputy director shall oversee administration of the department. [L 1989, c 211, pt of §6; am L 2000, c 253, §150]

" **§353C-4 Appointment of employees with police powers and other employees.** (a) The director may appoint employees to be public safety officers who shall have all of the powers of police officers; provided that the director may establish and

assign the employees to positions or categories of positions that may have differing titles, specific duties, and limitations upon the exercise of police powers.

(b) The director may appoint other personnel necessary to carry out the functions of the department.

(c) The state law enforcement officers transferred from the department of the attorney general by Act 211, Session Laws of Hawaii 1989, shall be responsible for public safety in state buildings as well as the personal protection of government officials and employees while in the conduct of their duties. The duties of state law enforcement officers shall also include the service of process, including subpoenas, warrants, and other legal documents, and other duties as the director may assign, including the performance of duties of other public safety officers within the department. State law enforcement officers shall have all of the powers of police officers, including the power of arrest. [L 1989, c 211, pt of §6; am L 1990, c 281, §12]

Cross References

Transfer of functions and employees, see §26-14.6.

" **[§353C-4.5] Correctional health care program.** There is established a correctional health care program within the department. The administrator of the correctional health care program and physicians who provide care to inmates shall be appointed by the director without regard to [chapter 76]. [L 2001, c 154, §2]

" **§353C-5 Criminal history record checks.** (a) The department shall develop standards to ensure the reputable and responsible characters of staff members of its correctional facilities which shall include criminal history record checks.

(b) For purposes of this section:

"Prospective staff member" means any applicant for a job in the department of public safety that is directly involved with the treatment and care of persons committed to a facility or that requires the exercise of police powers, including the power to arrest in the performance of its duties.

"Staff member" means any employee of the department of public safety who is directly involved with the treatment and care of persons committed to a facility or who possesses police powers, including the power of arrest.

(c) The department shall obtain criminal history record information through the Hawaii criminal justice data center in accordance with section 846-2.7, on all staff and prospective

staff members of the department of public safety. Prospective staff members shall be fingerprinted and the criminal history record check shall be completed prior to beginning employment.

(d) The department may deny employment to a prospective staff member who was convicted of a crime other than a minor traffic violation involving a fine of \$50 or less and if the department finds from the prospective staff member's criminal history record that the prospective staff member poses a risk to the health, safety, security, or well-being of inmates under supervision and confinement, other staff, or the public at large.

(e) Staff members shall not be subject to termination based on findings in their criminal records except for those whose conviction of a crime occurred after May 8, 1989, or under circumstances in which a staff member is a fugitive from justice. Staff members shall be subject to termination for crimes other than a minor traffic violation involving a fine of \$50 or less, where because of the staff member's conviction record, the staff member poses a risk to the health, safety, security, or well-being of inmates under supervision and confinement, other staff, or the public at large. [L 1992, c 65, §1; am L 1997, c 6, §1; am L 2003, c 95, §11]

Revision Note

In subsection (b), definitions rearranged pursuant to §23G-15.

" **[§353C-6] Parking fees, exemption.** Notwithstanding any other law, rule, or provision to the contrary, special service deputies of the department of public safety are exempt from all state and county parking meter fees and county time parking restrictions while in the performance of their official duties, including attendance at court; provided that this exemption shall:

- (1) Apply exclusively to state owned law enforcement vehicles assigned to the department of public safety; and
- (2) Not apply to private individuals retained by the department on a contractual basis to serve civil process in any capacity. [L 1992, c 80, §1]

Revision Note

Section was enacted as addition to chapter 26, but was renumbered to this chapter pursuant to §23G-15.

" **§353C-7 Federal reimbursement maximization special fund.**

(a) There is established in the state treasury the federal reimbursement maximization special fund, into which shall be deposited all federal reimbursements received by the department relating to the State Criminal Alien Assistance Program. Unless otherwise provided by law, all other receipts shall immediately be deposited to the credit of the general fund of the State.

(b) Moneys in the federal reimbursement maximization special fund shall be used by the department for the following purposes:

- (1) To meet the state match requirement for federal grants and costs associated with federal grant reporting requirements, including administrative expenses such as the hiring of temporary staff;
- (2) For any other purpose deemed necessary by the department for maintaining existing federal grants as well as pursuing federal grants;
- (3) To hire consultants to provide training for corrections officers;
- (4) To hire consultants to conduct facility or program evaluations;
- (5) To rent or purchase vehicles to transport inmates;
- (6) To provide pre-release and reentry programs;
- (7) To improve technology; and
- (8) To recruit and retain corrections workforce.

(c) The department shall prepare and submit an annual report on the status of the federal reimbursement maximization special fund to the legislature no later than twenty days before the convening of each regular session. The annual report shall include but not be limited to a description of the use of the funds. [L 2001, c 172, §1; am L 2012, c 77, §1; am L 2016, c 93, §1]

" **[§353C-8 Sexual assaults in prison.** (a)] The department of public safety, to the best of the department's ability, shall address sexual assault in prison and make every effort to seek grant moneys from the federal government to implement those efforts. The department shall place priority upon establishing:

- (1) Appropriate counseling services for sexual assault, to be made available to victims of prison rape within twenty-four hours of the report of an assault; and
- (2) Policies and standards of transparency to achieve a zero-tolerance policy for sexual assault.

[(b)] The department of public safety, no later than twenty days prior to the convening of each regular session, shall annually report data to the legislature regarding:

- (1) Sexual assault by persons in custody against other persons in custody of the department of public safety;
- (2) Sexual assault by correctional staff against persons in custody of the department of public safety;
- (3) Non-criminal sexual misconduct by staff, including sexual harassment of persons in custody of the department of public safety;
- (4) Criminal cases initiated, and closed by dismissal, plea, or verdict, for sexual assaults by or upon a person in custody of the department of public safety; and
- (5) Civil claims filed and closed by dismissal, settlement, or verdict for sexual assaults by or upon a person in custody of the department of public safety. [L 2010, c 194, §§2, 3]

Revision Note

L 2010, c 194, §§2, 3 were codified to this section pursuant to §23G-15.

" **§353C-9 Department accreditation required.** The department shall pursue and obtain accreditation for the sheriff division from the Commission on Accreditation for Law Enforcement Agencies, Inc. [L 2011, c 111, §2]

" **§353C-10 Service of process; list.** *[Repealed June 30, 2020. L 2015, c 101, §4.]* (a) For service of process, the director shall maintain a list of independent civil process servers to process:

- (1) Orders to show cause pursuant to chapters 603, 604, and 633;
- (2) Garnishment pursuant to chapter 652;
- (3) Writs of replevin and attachment pursuant to chapter 634;
- (4) Writs of possession pursuant to chapters 501 and 666;
- (5) Orders for examination pursuant to chapter 636; and
- (6) Writs of attachment or execution pursuant to chapter 651.

(b) Any independent civil process server may submit the server's name to the director to be placed on the list; provided that a person shall not be placed on the list if the person:

- (1) Is serving a criminal sentence;
- (2) Has been convicted of a crime within the previous ten years;
- (3) Is required to register as a sex offender;

- (4) Is subject to any other legal restriction, including a temporary restraining order, that prevents the person from serving process; or
- (5) Cannot provide a copy of a current State of Hawaii general excise tax license.

(c) The department, the State, and the agencies, officers, and employees of the department or the State shall not be responsible or liable for the actions of any independent civil process servers on the list. The maintenance of the list shall not create a private cause of action against the department, the State, or the agencies, officers, and employees of the department or the State.

(d) Placement of a person's name on the list shall not make the person a law enforcement officer, sheriff or deputy sheriff, or an employee or agent of the State. [L 2013, c 116, §§1, 25; am L 2015, c 101, §1]