

ACT 257

H.B. NO. 2451-84

A Bill for an Act Relating to the Penal Code.

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

SECTION 1. Findings and purpose. The legislature finds that there are an increasing number of crimes being committed against tourists in Waikiki and other areas frequented by tourists. Tourism is the State's primary industry and source of income.

The legislature finds that imposing geographic restrictions as a condition of probation or parole, especially when used to keep convicted persons out of Waikiki and other tourist areas where they have previously perpetrated crimes against tourists, will enhance the reputation of Waikiki and other tourist destination areas and will benefit all of the citizens of Hawaii.

The legislature also finds that probation and parole conditions which limit the convicted person's freedom of movement are permissible where they will further such goals as deterrence or rehabilitation, or where they will be protective of the State's interest in the health, safety, and welfare of its citizens.

The legislature believes that a court or the paroling authority may bar a person from certain areas if the penalty is reasonably related to the offense, as a condition of probation or parole. Thus, if a person commits crimes in certain areas or places, a court could bar the person from those areas as a condition of probation or parole, provided that if the person has a legitimate and compelling

reason to go to that area or place, he could apply to the court for specific permission.

The purpose of this bill is to amend the laws relating to conditions of probation and parole, to make it clear that limitations on entering specific geographical areas are legitimate limitations on a probationer or parolee.

SECTION 2. Section 706-624, Hawaii Revised Statutes, is amended to read as follows:

“§706-624 Conditions of suspension of sentence or probation. (1) When the court suspends the imposition of sentence on a person who has been convicted of a crime or sentences him to be placed on probation, it shall attach such reasonable conditions, authorized by this section, as it deems necessary to insure that he will lead a law-abiding life or likely to assist him to do so.

- (2) The court, as a condition of its order, may require the defendant:
- (a) To meet his family responsibilities;
 - (b) To devote himself to an employment or occupation;
 - (c) To undergo available medical or psychiatric treatment and to enter and remain in a specified institution, when required for that purpose;
 - (d) To pursue a prescribed secular course of study or vocational training;
 - (e) To attend or reside in a facility established for the instruction, recreation or residence of persons on probation;
 - (f) To refrain from frequenting unlawful or disreputable places or consorting with disreputable persons;
 - (g) To refrain from entering specified geographical areas without the court's permission;
 - [(g)] (h) To have in his possession no firearms or other dangerous instruments unless granted written permission by the court;
 - [(h)] (i) To make restitution of the fruits of his crimes or to make reparation, in an amount he can afford to pay, for the loss or damage caused thereby;
 - [(i)] (j) To remain within the jurisdiction of the court and to notify the court or the probation officer of any change in his address or his employment;
 - [(j)] (k) To report as directed to the court or the probation officer and to permit the officer to visit his home;
 - [(k)] (l) To post a bond, with or without surety, conditioned on the performance of any of the foregoing obligations;
 - [(l)] (m) To satisfy any other conditions reasonably related to the rehabilitation of the defendant and not unduly restrictive of his liberty or incompatible with his freedom or conscience.

(3) When the court sentences a person who has been convicted of a misdemeanor to be placed on probation, it may require him to serve a term of imprisonment not exceeding six months as an additional condition of its order. When the court sentences a person who has been convicted of a felony to be placed on probation, it may require him to serve a term of imprisonment not exceeding one year as an additional condition of its order. The court may order that the term of imprisonment be served intermittently.

(4) The defendant shall be given a written copy of any requirements imposed pursuant to this section, stated with sufficient specificity to enable him to guide himself accordingly.”

SECTION 3. Section 706-670, Hawaii Revised Statutes, is amended to read as follows:

“§706-670 Parole procedure; release on parole; terms of parole, recommitment, and reparole; final unconditional release.¹ (1) Parole hearing. A person sentenced to an indeterminate term of imprisonment shall receive an initial parole hearing at least one month before the expiration of the minimum term of imprisonment determined by the Hawaii paroling authority pursuant to section 706-669. If parole is not granted at that time, additional hearings shall be held at twelve-month intervals or less until parole is granted or the maximum period of imprisonment expires.

(2) Parole conditions. The authority, as a condition of parole, may impose reasonable conditions on the prisoner as provided under section 706-624(2).

[(2)] (3) Prisoner’s plan and participation. Each prisoner shall be given reasonable notice of his parole hearing and shall prepare a parole plan, setting forth the manner of life he intends to lead if released on parole, including specific information as to where and with whom he will reside and what occupation or employment he will follow. The institutional parole staff shall render reasonable aid to the prisoner in the preparation of his plan and in securing information for submission to the authority. In addition, he shall:

- (a) Be permitted to consult with any persons whose assistance he reasonably desires, including his own legal counsel, in preparing for a hearing before the authority;
- (b) Be permitted to be represented and assisted by counsel at the hearing;
- (c) Have counsel appointed to represent and assist him if he so requests and cannot afford to retain counsel; and
- (d) Be informed of his rights under (a), (b), and (c).

[(3)] (4) Authority’s decision; initial minimum term of parole. The authority shall render its decision regarding a prisoner’s release on parole within a reasonable time after the parole hearing. If the authority denies parole after the

hearing, it shall state its reasons in writing. A verbatim stenographic or mechanical record of the parole hearing shall be made and preserved in transcribed or untranscribed form. The authority may in its discretion order a reconsideration or rehearing of the case at any time. If parole is granted by the authority, the authority shall set the initial minimum length of the parole term.

[(4)] (5) Release upon expiration of maximum term. If the authority fixes no earlier release date, a prisoner's release shall become mandatory at the expiration of his maximum term of imprisonment.

[(5)] (6) Sentence of imprisonment includes separate parole term. A sentence to an indeterminate term of imprisonment under this chapter includes as a separate portion of the sentence a term of parole or of recommitment for violation of the conditions of parole.

[(6)] (7) Revocation hearing. When a parolee has been recommitted, the authority shall hold a hearing within sixty days after his return to determine whether his parole should be revoked. The parolee shall have reasonable notice of the grounds alleged for revocation of his parole. The institutional parole staff shall render reasonable aid to the parolee in preparation for the hearing. In addition, the parolee shall have, with respect to the revocation hearing, those rights set forth in subsection [(2)(a), (2)(b), (2)(c), and (2)(d).] (3)(a), (3)(b), (3)(c), and (3)(d). A record of the hearing shall be made and preserved as provided in subsection [(3).] (4).

[(7)] (8) Length of recommitment and reparole after revocation of parole. If a parolee's parole is revoked, the term of further imprisonment upon such recommitment and of any subsequent reparole or recommitment under the same sentence shall be fixed by the authority but shall not exceed in aggregate length the unserved balance of the maximum term of imprisonment.

[(8)] (9) Final unconditional release. When his maximum parole term has expired or he has been sooner discharged from parole, a prisoner shall be deemed to have served his sentence and shall be released unconditionally.¹

SECTION 4. Statutory material to be repealed is bracketed. New material is underscored.

SECTION 5. This Act shall take effect upon its approval.

(Approved June 4, 1984.)

Note

1. So in original. Wrong version seems to be amended.