

ACT 195

H.B. NO. 3470

A Bill for an Act Relating to the Release of Pretrial Inmates.

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

SECTION 1. Act 305, Session Laws of Hawaii 1993, is amended by amending section 1 to read as follows:

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

§353- Release of pretrial inmates to prevent overcrowding. (a) Notwithstanding the provisions of chapter 804 and any other law to the contrary and except as provided in subsection (b), the director or the director's designee may order the release of pretrial inmates on recognizance to prevent overcrowding when a community correctional center has reached capacity, as determined by the director. The director's order shall supersede and have the same force and effect as an order entered by a court pursuant to chapter 804. A copy of the director's order shall be filed with the court in which the charge against the pretrial¹ inmate is pending.

(b) No person who has been denied bail or whose bail has been set at more than \$5,000 pursuant to chapter 804, or who has been charged with or convicted of or is on probation or parole for a serious crime, as defined in section 804-3, involving violence against a person shall be eligible for release pursuant to this section.

(c) The power to release a pretrial² inmate pursuant to this section is granted solely for the purpose of managing the population of the community correctional centers and nothing herein shall be construed as granting any person the right to be released. An order releasing a pretrial² inmate pursuant to this section shall not operate to dismiss or otherwise terminate any charges then pending against the pretrial¹ inmate.

(d) The State, 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, its officers, and employees, in an official capacity under this section.

(e) The director shall adopt rules in accordance with chapter 91 for the release of pretrial¹ inmates pursuant to this section.

§353- Terms and conditions of release; violations; sanctions. (a) A pretrial inmate released pursuant to section 353- shall be subject to the conditions stated in section 804-7.4. In addition, the director may impose any of the conditions which 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.] Every pretrial inmate released under this section shall be subject to the express condition, to be set forth in the official written notification of release, that release may be revoked by order of the director or the director's designee in the event that the pretrial inmate violates any terms or conditions of the release.

Upon receipt of specific information from an intake service center worker that a pretrial inmate has violated any of the terms or conditions of the release,

the director or the director's designee may order the arrest and temporary return to custody of the pretrial inmate for the purpose of ascertaining whether or not there is sufficient cause to warrant the revocation of the pretrial inmate's release under section 353-_____ . The arrest order shall state the alleged violation which gave rise to its issuance.

Upon the retaking of the pretrial inmate into custody, hearing on the alleged violation shall be conducted promptly for the purpose of ascertaining whether or not there is sufficient cause to warrant the revocation of the pretrial inmate's release. The pretrial inmate shall have, with respect to the revocation hearing, those rights set forth in subsection 706-670 (3)(a), (3)(b), (3)(c), and (3)(d).

If sufficient cause for the alleged violation of terms or conditions of release is found at the hearing, the director or director's designee may impose different or additional conditions on the pretrial inmate's release or revoke the pretrial inmate's release. If sufficient cause is not found, the pretrial inmate shall be released from custody subject to all of the original terms and conditions of release.

Notice of reincarceration shall be filed with the court."

SECTION 2. No later than twenty days prior to the convening of the regular session of 1995, the director shall submit a written report on the recidivism rate of pretrial inmates released under this program.

SECTION 3. Statutory material to be repealed is bracketed. New statutory material is underscored.

SECTION 4. This Act shall take effect upon its approval, and shall be repealed on June 30, 1995.

(Approved June 21, 1994.)

Notes

1. "Pretrial" should be underscored.
2. Prior to amendment "an" appeared here.