

ACT 227

H.B. NO. 3033

A Bill for an Act Relating to Corrections.

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

Part I

SECTION 1. The legislature finds that the sum of \$5,000,000 was appropriated in fiscal year 1997-1998 for transportation and housing 300 inmates in mainland correctional facilities. The annual appropriation was increased to \$10,000,000 in fiscal year 1998-1999, and it is estimated that by fiscal year 1999-2000 more than one thousand two-hundred inmates will have to be transported and housed in mainland correctional facilities at a cost of \$20,000,000 per year. There are, however, signs that mainland prison operators may not be able to continue housing Hawaii inmates as they have done in the past.

The legislature also finds that the difficulties of siting and building new correctional facilities is clear—no one wants a prison with violent criminals (e.g., sex offenders) built in their backyard. Consequently, the renovation and expansion of existing facilities has been the primary means of adding new bed spaces to the Hawaii prison system for many years.

SECTION 2. The purpose of this bill is to allow the governor to enter into contracts for the development of a privately-constructed correctional facility on public or private property and for the lease or purchase of the correctional facility by the State. This bill will also authorize the governor to negotiate private in-state correctional facilities or turnkey correctional facilities. New provisions will require the department of public safety to enter into partnership with the affected community on the site selection process to alleviate negativity surrounding the development of a prison facility. Added provisions will further extend the authority of the director of public safety to allow the release of pre-trial inmates to prevent overcrowding in our state correctional facilities within certain parameters as specified in law.

Part II

SECTION 3. Section 26-14.6, Hawaii Revised Statutes, is amended by amending subsection (b) to read as follows:

“(b) The department of public safety shall be responsible for the formulation and implementation of state policies and objectives for correctional, security, law enforcement, and public safety programs and functions, for the administration and maintenance of all public or private correctional facilities and services, for the service of process, and for the security of state buildings.”

SECTION 4. Section 323-1, Hawaii Revised Statutes, is amended to read as follows:

“~~[[§323-1]]~~ **Contracts with territories and possessions of the United States.** The governor is authorized to enter into and execute contracts in the name of the State with territories, possessions, and other areas in the Pacific Ocean region [which] that are under the jurisdiction of the United States, regarding the use of health and public or private correctional facilities of the State on a space available basis; provided that any such contract shall provide for the payment of costs to the State.”

SECTION 5. Chapter 353, Hawaii Revised Statutes, is amended by adding three new sections to be appropriately designated and to read as follows:

“**§353- 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.

§353- Development of in-state correctional facilities. Notwithstanding any other law to the contrary, the governor, with the assistance of the director, may negotiate with any person for the development of private in-state correctional facilities or public in-state turnkey correctional facilities, to reduce prison overcrowding. Any development 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.

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.

§353- 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; provided further that a community benefit and enhancement package shall be developed by the department and the affected community to mitigate the negative aspects of building a prison facility in the community; provided further that the benefit and enhancement package may include, but is not limited to, infrastructure improvements, job training programs or improvements to schools and health care facilities; social programs, and other government functions.”

Part III

SECTION 6. Act 305, Session Laws of Hawaii 1993, as amended by Act 195, Session Laws of Hawaii 1994, as amended by Act 156, Session Laws of Hawaii 1995, as amended by Act 216, Session Laws of Hawaii 1996, 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] pre-trial inmates to prevent overcrowding. (a) Notwithstanding chapter 804 and any other law to the contrary and except as provided in subsection (b), the director or a designee of the director may order the release of [pretrial] pre-trial inmates on recognizance to prevent or relieve 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 [pretrial] pre-trial inmate is pending.

(b) No [person] pre-trial inmate who has been:¹

- (1) [denied] Denied bail or whose bail has been set at more than \$10,000 pursuant to chapter 804[, or who has been];
- (2) [charged] Charged with or convicted of or is on probation or parole for a serious crime, as defined in section 804-3, or for a crime involving violence against a person[.];
- (3) Found to be mentally defective or mentally incapacitated pursuant to section 707-700;
- (4) Convicted of three or more counts of contempt of court within the twelve month period immediately preceding the inmate’s present detention;
- (5) Arrested three or more times within the twelve month period immediately preceding the inmate’s present detention; or
- (6) Charged with a class C felony or misdemeanor offense involving risk to public safety as determined by the director or a designee of the director,

shall be eligible for release pursuant to this section.

(c) Prior to the release of any inmate pursuant to this section, the director or a designee of the director shall notify the prosecuting authority that the inmate will be released pursuant to this section.

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

(e) The State, its officers, and employees, shall not be subject to any civil liability or penalty 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.

(f) The director shall adopt rules in accordance with chapter 91 for the release of [pretrial] pre-trial inmates pursuant to this section.

§353- Terms and conditions of release; violations; sanctions. (a) A [pretrial] pre-trial 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) Every [pretrial] pre-trial 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 a designee of the director in the event that the [pretrial] pre-trial inmate violates any terms or conditions of the release.

Upon receipt of specific information from an intake service center worker that a [pretrial] pre-trial inmate has violated any of the terms or conditions of the release, the director or a designee of the director may order the arrest and temporary return to custody of the [pretrial] pre-trial inmate for the purpose of ascertaining whether or not there is sufficient cause to warrant the revocation of the [pretrial] pre-trial inmate's release under section 353- . The arrest order shall state the alleged violation which gave rise to its issuance.

Upon the [retaking] remanding of the [pretrial] pre-trial 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] pre-trial inmate's release. The [pretrial] pre-trial inmate shall have, with respect to the revocation hearing, those rights set forth in section 706-670(3).

If sufficient cause for the alleged violation of terms or conditions of release is found at the hearing, the director or a designee of the director may impose different or additional conditions on the [pretrial] pre-trial inmate's release or revoke the [pretrial] pre-trial inmate's release. If sufficient cause is not found, the [pretrial] pre-trial 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 7. Act 305, Session Laws of Hawaii 1993, as amended by Act 195, Session Laws of Hawaii 1994, as amended by Act 156, Session Laws of Hawaii 1995, as amended by Act 216, Session Laws of Hawaii 1996, is amended by amending section 2 to read as follows:

“SECTION 2. No less than twenty days prior to the convening of the regular session of the legislature in each year from 1994 through [1998,] 1999, the director shall report the progress of the program, and make recommendations for further legislative action.”

SECTION 8. Act 195, Session Laws of Hawaii 1994, as amended by Act 156, Session Laws of Hawaii 1995, as amended by Act 216, Session Laws of Hawaii 1996, is amended by amending section 2 to read as follows:

“SECTION 2. No later than twenty days prior to the convening of the regular session in each year from 1995 through [1998,] 1999, the director shall submit a written report to the legislature on the recidivism rate of [pretrial] pre-trial inmates released under this program.”

SECTION 9. Act 305, Session Laws of Hawaii 1993, as amended by Act 195, Session Laws of Hawaii 1994, as amended by Act 156, Session Laws of Hawaii 1995, as amended by Act 216, Session Laws of Hawaii 1996, is amended by amending section 4 to read as follows:

“SECTION 4. This Act shall take effect on July 1, 1993, and shall be repealed on June 30, [1998.] 1999.”

SECTION 10. Act 195, Session Laws of Hawaii 1994, as amended by Act 156, Session Laws of Hawaii 1995, as amended by Act 216, Session Laws of Hawaii 1996, is amended by amending section 4 to read as follows:

“SECTION 4. This Act shall take effect upon its approval, and shall be repealed on June 30, [1998.] 1999.”

SECTION 11. The Department of Public Safety shall submit a report, twenty days prior to the convening of the regular sessions of 1999 and 2000, regarding the status of the negotiations for the development of in-state correctional facilities pursuant to section 353- , and the status of the implementation of community partnering pursuant to section 353- .

SECTION 12. Statutory material to be repealed is bracketed. New statutory material is underscored.²

SECTION 13. This Act shall take effect upon its approval.

(Approved July 20, 1998.)

Notes

1. Colon should be underscored.
2. Edited pursuant to HRS §23G-16.5.