

ACT 132

S.B. NO. 1163

A Bill for an Act Relating to the Release of Pre-Trial Inmates.

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

SECTION 1. 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, and as amended by Act 227, Session Laws of Hawaii 1998, is amended as follows:

(1) 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 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 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 pre-trial inmate is pending.

(b) No pre-trial inmate who has been:

- (1) Denied bail or whose bail has been set at more than \$10,000 pursuant to chapter 804;
- (2) 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;] 704-400;
- (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 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 pre-trial inmate pursuant to this section shall not operate to dismiss or otherwise terminate any charges then pending against the 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 pre-trial inmates pursuant to this section.

§353- Terms and conditions of release; violations; sanctions. (a) A 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 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 pre-trial inmate violates any terms or conditions of the release.

Upon receipt of specific information from an intake service center worker that a 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 pre-trial inmate for the purpose of ascertaining whether or not there is sufficient cause to warrant the revocation of the pre-trial inmate's release under section 353- . The arrest order shall state the alleged violation which gave rise to its issuance.

Upon the remanding of the 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 pre-trial inmate's release. The 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 pre-trial inmate's release or revoke the pre-trial inmate's release. If sufficient cause is not found, the 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.””

(2) 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 [1999,] 2000, the director shall report the progress of the program, and make recommendations for further legislative action.”

(3) 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, [1999.] 2000.”

SECTION 2. 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

ACT 132

1996, and as amended by Act 227, Session Laws of Hawaii 1998, is amended as follows:

(1) 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 [1999,] 2000, the director shall submit a written report to the legislature on the recidivism rate of pre-trial inmates released under this program.”

(2) 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, [1999.] 2000.”

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

SECTION 4. This Act shall take effect on June 29, 1999.

(Approved June 25, 1999.)