

JAN 25 2012

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**A BILL FOR AN ACT**

RELATING TO PUBLIC SAFETY.

**BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF HAWAII:**

1           SECTION 1. In June 2011, the Governor, Chief Justice,  
2 Senate President, House Speaker and Department of Public Safety  
3 Director joined together to begin developing a data-driven  
4 justice reinvestment strategy to bring out-of-state prisoners  
5 back to Hawaii, reduce spending on corrections, and reinvest  
6 savings generated in strategies that would reduce recidivism and  
7 crime, and increase public safety. To this end, they sought  
8 assistance from the Bureau of Justice Assistance, a division of  
9 the U.S. Department of Justice, and the Pew Center on the  
10 States. The state leaders established a bipartisan, inter-  
11 branch Justice Reinvestment Working Group comprising leading  
12 state and local officials to receive intensive technical  
13 assistance from the Council of State Governments (CSG) Justice  
14 Center. The CSG Justice Center assisted the working group in  
15 analyzing data from every aspect of Hawaii's criminal justice  
16 and corrections systems.

1 Overall, the analysis found that crime and victimization  
2 rates have declined, as have arrests and felony convictions for  
3 violent and property crime.

4 While crime rates have declined, the population under  
5 probation supervision and incarcerated has not declined, and in  
6 some cases has increased. From FY 2000 to FY 2011, the state's  
7 prison and jail population grew 18 percent, from 5,118 to 6,043.  
8 During the same period, expenditures for the Corrections  
9 Division of the Department of Public Safety increased 70  
10 percent, from \$112 million in FY 2000 to \$190 million in FY  
11 2011. Approximately one-third of Hawaii's prison population is  
12 housed in out-of-state facilities on the mainland. The cost of  
13 housing these offenders out-of-state was \$45 million in FY 2011.

14 Analysis of the data from Hawaii's criminal justice and  
15 corrections systems identified three areas for improvement: pre-  
16 trial process, parole, and payment of restitution.

17 **PART I**

18 SECTION 2. The pre-trial population has increased due to  
19 longer lengths of stay. The purpose of this part of the bill is  
20 to provide the court with a more timely assessment of a person's  
21 risk to reoffend or likelihood of not appearing for court.

22 Section 353-10 is amended to require that an objective  
23 assessment is conducted within the first three working days of a

1 person's commitment to a community correctional center in order  
2 to allow the courts to more quickly determine who is appropriate  
3 for release on their own recognizance, to supervision, or to  
4 bail.

5 SECTION 3. Section 353.10, Hawaii Revised Statutes, is  
6 amended to read as follows:

7 **"§353-10 Reentry intake service centers.** There shall be  
8 within the department of public safety, a reentry intake service  
9 center for adults in each of the counties, to screen, evaluate,  
10 and classify the admission of persons to community correctional  
11 centers and to provide for the successful reentry of persons  
12 back into the community. Each center shall be directed and  
13 managed by a manager and shall be staffed by a team of  
14 psychiatrists, social workers, technicians, and other personnel  
15 as may be necessary. The director of public safety may appoint  
16 full-time or part-time professional and clerical staff or  
17 contract for professional services to carry out the duties of  
18 the centers as identified in this section.

19 The centers shall:

- 20 (1) Provide orientation, guidance, and technical services;
- 21 (2) Provide social-medical-psychiatric-psychological  
22 diagnostic evaluation;

- 1           (3) Provide pretrial risk assessments on adult offenders  
2           for the courts [~~and assist in the conduct of~~  
3           ~~presentence assessments on adult offenders and the~~  
4           ~~preparation of presentence reports when requested by~~  
5           ~~the courts;~~] within three working days of admission to  
6           a community correctional center. "Pretrial risk  
7           assessment" means an objective, research based,  
8           validated assessment tool that measures a defendant's  
9           risk of flight and risk of anticipated criminal  
10           conduct while on pretrial release pending  
11           adjudication. Offenders excluded from this section  
12           include persons with local, state or federal detainers  
13           or holds, persons detained without bail, persons  
14           detained for probation violation, persons facing  
15           revocation of bail or supervised release, and persons  
16           who have had a pretrial risk assessment completed  
17           prior to admission to a community correctional center;
- 18           (4) Assist in the conduct of presentence assessments on  
19           adult offenders and the preparation of presentence  
20           reports when requested by the courts;
- 21           [+4+] (5) Provide correctional prescription program  
22           planning and security classification;



1 use an objective risk assessment to determine which programs to  
2 require offenders to complete prior to release, in order to  
3 focus resources on the offenders most likely to benefit from  
4 programming and supervision, and to reduce recidivism by using  
5 swift and certain, yet less costly and severe responses to  
6 parole condition violations.

7 SECTION 5. Section 353-61, Hawaii Revised Statutes, is  
8 amended to read as follows:

9 **"§353-61 Hawaii paroling authority; appointment; tenure;**  
10 **qualifications.** Members of the paroling authority shall be  
11 nominated by a panel composed of the chief justice of the Hawaii  
12 supreme court, the director, the president of the bar  
13 association of Hawaii, a representative designated by the head  
14 of the Interfaith Alliance Hawaii, a member from the general  
15 public to be appointed by the governor, and the president of the  
16 Hawaii chapter of the National Association of Social Workers.  
17 The panel shall submit to the governor the names of not less  
18 than three persons, designated as the nominees, for chairperson  
19 or as a member, for each vacancy. The requirement for  
20 nomination by the panel established under this section shall  
21 only apply to a nominee's nomination by the governor to an  
22 initial term on the paroling authority and not to any subsequent  
23 consecutive term of a sitting paroling authority member or

1 chairperson whose initial appointment to office was made  
2 pursuant to a nomination by the panel. The governor shall  
3 appoint, in the manner prescribed by section 26-34, a paroling  
4 authority to be known as the Hawaii paroling authority, to  
5 consist of [~~three~~] four members one of whom shall be designated  
6 chairperson. Appointments shall be made for terms of four  
7 years, commencing from the date of expiration of the last  
8 preceding term. Any vacancy in an unexpired term shall be  
9 filled by appointment for the remainder of the unexpired term.  
10 Nominees to the authority shall be selected on the basis of  
11 their qualifications to make decisions that will be compatible  
12 with the welfare of the community and of individual offenders,  
13 including their background and ability for appraisal of  
14 offenders and the circumstances under which offenses were  
15 committed."

16 SECTION 6. Section 353-63, Hawaii Revised Statutes, is  
17 amended to read as follows:

18 "**§353-63 Service of Hawaii paroling authority members;**  
19 **compensation; expenses.** The chairperson of the Hawaii paroling  
20 authority shall serve on a full-time basis. The other [~~two~~]  
21 three members shall serve on a part-time basis. Effective July  
22 1, 2005, the chairperson of the Hawaii paroling authority shall  
23 be paid a salary set at eighty-seven per cent of the salary of

1 the director of public safety. The compensation of each of the  
2 part-time members shall be eighty per cent of the hourly wage  
3 paid the chairperson. For each hour engaged in the official  
4 duties of the authority, each part-time member of the authority  
5 shall be paid an hourly wage at the percentage rate specified in  
6 this section based on the hourly wage paid the chairperson;  
7 provided that compensation shall not exceed eighty per cent of  
8 the total regular working hours in a month; provided further  
9 that part-time members shall not be entitled to any vacation,  
10 sick leave, or other benefits except as provided in this  
11 section. All paroling authority members shall receive their  
12 necessary expenses for travel and incidentals which shall be  
13 paid from appropriations provided the authority for such  
14 purposes, on vouchers approved by the director of public  
15 safety."

16 SECTION 7. Section 706-670, Hawaii Revised Statutes, is  
17 amended by amending subsection (1) to read as follows:

18 "(1) Parole hearing. A person sentenced to an  
19 indeterminate term of imprisonment shall receive an initial  
20 parole hearing at least one month before the expiration of the  
21 minimum term of imprisonment determined by the Hawaii paroling  
22 authority pursuant to section 706-669. If the person has been  
23 sentenced to multiple terms of imprisonment, the parole hearing



1 shall not be required until at least one month before the  
2 expiration of the minimum term which expires last in time. A  
3 validated risk assessment shall be used to determine the  
4 person's risk of re-offense and suitability for community  
5 supervision. "Validated risk assessment" means an actuarial  
6 tool scientifically proven to determine a person's likelihood of  
7 committing future criminal behavior. The department of public  
8 safety shall select a research based risk assessment tool and  
9 shall validate the accuracy of the risk assessment tool at least  
10 every three years. A person who is assessed as low risk for re-  
11 offending shall be granted parole upon completing their minimum  
12 sentence, unless the inmate:

- 13       (a) Is found to have committed a misconduct while in  
14           prison that is equivalent to a misdemeanor or felony  
15           crime within two years of the expiration of the  
16           minimum term of imprisonment;
- 17       (b) Has any pending felony charges;
- 18       (c) Is incarcerated for a sex offense as defined in Part  
19           V. or child abuse as defined in Part VI., Chapter 707  
20           HRS and has not completed Sex Offender Treatment  
21           Program successfully; or
- 22       (d) Has local, state or federal detainers or holds.

1 If parole is not granted at that time, additional hearings shall  
2 be held at twelve-month intervals or less until parole is  
3 granted or the maximum period of imprisonment expires. The  
4 State shall have the right to be represented at the initial  
5 parole hearing and all subsequent parole hearings by the  
6 prosecuting attorney, who may present written testimony and make  
7 oral comments, and the authority shall consider the testimony  
8 and comments in reaching its decision. The authority shall  
9 notify the appropriate prosecuting attorney of the hearing at  
10 the time the prisoner is given notice of the hearing."

11 SECTION 8. Section 353-66, Hawaii Revised Statutes, is  
12 amended by amending subsection (e) to read as follows:

13 "(e) Any paroled prisoner retaken and reimprisoned as  
14 provided in this chapter shall be confined according to the  
15 paroled prisoner's sentence for that portion of the paroled  
16 prisoner's term remaining unserved at time of parole, but  
17 successive paroles may, in the discretion of the paroling  
18 authority, be granted to the prisoner during the life and in  
19 respect of the sentence. If the paroled prisoner is retaken and  
20 reimprisoned for violating a condition of parole but has not  
21 been charged with a new felony offense, absconded or left the  
22 state without permission from the paroling authority, violated  
23 conditions applicable to sex offenders such as registering as a

1 sex offender or conditions related to proximity to specified  
 2 locations or persons, or been previously reimprisoned for  
 3 violating the conditions of parole on the current offense, the  
 4 paroled prisoner shall be confined for no more than six months  
 5 or for that portion of the paroled prisoner's term remaining  
 6 unserved at time of parole, whichever is shorter. The six month  
 7 period of confinement shall not start until the paroling  
 8 authority has revoked the parole of the prisoner. The prisoner  
 9 shall be given credit for time served in custody pending a  
 10 hearing on revocation of parole."

11 **PART III**

12 SECTION 9. The purpose of this part of the bill is to  
 13 ensure accountability for victims and offenders by improving how  
 14 restitution is collected by the department of public safety and  
 15 ensuring all felony offenders are supervised for at least some  
 16 minimum period of time after their release from incarceration.

17 SECTION 10. Section 353-22.6, Hawaii Revised Statutes, is  
 18 amended to read as follows:

19 "**§353-22.6 Victim restitution.** The director of public  
 20 safety shall enforce victim restitution orders against all  
 21 moneys earned, deposited or credited to an inmate's individual  
 22 account by the prisoner while incarcerated. The amount deducted  
 23 shall be [~~ten per cent~~] twenty-five percent of the [~~prisoner's~~

1 ~~annual earnings.]~~ total of all moneys earned, new deposits and  
2 credits to the inmate's individual account. The moneys shall be  
3 deducted monthly and paid to the victim once the amount reaches  
4 twenty-five dollars, or annually, whichever is sooner. This  
5 section shall not apply to moneys earned on work furlough  
6 pursuant to section 353-17."

7 SECTION 11. Section 353-69, Hawaii Revised Statutes, is  
8 amended to read as follows:

9 "**§353-69 Parole when.** Except as provided for in section  
10 706-670, no parole shall be granted unless it appears to the  
11 Hawaii paroling authority that there is a reasonable probability  
12 that the prisoner concerned will live and remain at liberty  
13 without violating the law and that the prisoner's release is not  
14 incompatible with the welfare and safety of society."

15 SECTION 12. Section 706-670, Hawaii Revised Statutes, is  
16 amended by amending subsection (5) to read as follows:

17 "(5) [~~Release upon expiration of maximum term. If the~~  
18 ~~authority fixes no earlier release date, a prisoner's release~~  
19 ~~shall become mandatory at the expiration of the prisoner's~~  
20 ~~maximum term of imprisonment.] Supervised parole release prior  
21 to the expiration of the maximum term. Notwithstanding section  
22 706-605 (1)(c), if the authority fixes no earlier release date  
23 or has not released a prisoner upon completion of a set minimum~~

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1 term, a prisoner shall be released to parole based on the  
2 longest term of imprisonment as follows:

3 (a) Class A felony, eighteen months prior to the  
4 expiration of the maximum term;

5 (b) Class B felony, twelve months prior to the expiration  
6 of the maximum term; and

7 (c) Class C felony, six months prior to the expiration of  
8 the maximum term.

9 No prisoner shall be incarcerated beyond the expiration of the  
10 prisoner's maximum term of imprisonment."


11 SECTION 13. Statutory material to be repealed is bracketed  
12 and stricken. New statutory material is underscored.

13 SECTION 14. This Act shall take effect upon July 1, 2012  
14 except for the following sections. Section 3 shall take effect  
15 January 1, 2013. Sections 7 and 12 shall take effect upon July  
16 1, 2012, for those individuals committing an offense on or after  
17 that date. Sections 8 shall take effect on July 1, 2012 for any  
18 individual on parole supervision on or after July 1, 2012.  
19 Section 10 shall take effect January 1, 2013.

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INTRODUCED BY: 

23

BY REQUEST

**Report Title:**

Relating to Public Safety.

**Description:**

Based on analysis and policy options developed as part of the justice reinvestment initiative. Amends statutes to require a pre-trial risk assessment to be conducted within three working; expand the parole board and require the use of validated risk assessments to guide parole decisions; limit length of incarceration for first-time parole violators; increase victim restitution payments by inmates; require a period of parole supervision prior to the maximum sentence date.

*The summary description of legislation appearing on this page is for informational purposes only and is not legislation or evidence of legislative intent.*

## JUSTIFICATION SHEET

DEPARTMENT: Office of the Governor.

TITLE: A BILL FOR AN ACT RELATING TO PUBLIC SAFETY.

PURPOSE: To promulgate law effecting implementation of criminal justice system policies and practices that would address inefficiencies in processing pretrial defendants, improve the targeting and allocation of resources aimed at reducing recidivism, and strengthening accountability by offenders through improvements to restitution collection and supervision upon release from prison.

MEANS: Amend sections 353-10, 353-22.1, 353-61, 353-63, 353-66, 353-69, and 706-670, Hawaii Revised Statutes (HRS).

JUSTIFICATION: In June 2011, the Governor, Chief Justice, Senate President, House Speaker and Department of Public Safety Director joined together to begin developing a data-driven justice reinvestment strategy to bring out-of-state prisoners back to Hawaii, reduce spending on corrections, and reinvest savings generated in strategies that would reduce recidivism and crime, and increase public safety. To this end, they sought assistance from the Bureau of Justice Assistance, a division of the U.S. Department of Justice, and the Pew Center on the States. The state leaders established a bipartisan, inter-branch Justice Reinvestment Working Group comprising leading state and local officials to receive intensive technical assistance from the Council of State Governments (CSG) Justice Center. The CSG Justice Center assisted the working group

in analyzing data from every aspect of the Hawaii's criminal justice and corrections system.

Overall, the analysis found that crime and victimization rates have declined since 1997. Subsequently, so have arrests and felony convictions for violent and property crime.

Despite these declines in crime and the criminal justice system's initial response, the population under probation supervision and incarcerated has not declined, and in some cases has increased. From 2006 to 2010, the state's probation population increased 11%, from 16,079 to 17,771. From FY 2000 to FY 2010, the state's prison population grew 16 percent, from 5,118 to 5,921. During the same period, expenditures for the Corrections Division of the Department of Public Safety increased 63 percent, from \$112 million in FY 2000 to \$192 million in FY 2010. Approximately one-third of Hawaii's prison population is housed in out-of-state facilities on the mainland. The cost of housing these offenders out-of-state was \$45 million in FY 2010.

In examining why these populations and corresponding state spending has increased, the analysis conducted identified four key reasons and areas for improvement: inefficiencies in the pre-trial process causing that population to increase, resources not being focused on the highest risk offenders where they can do the most to reduce recidivism and costs, lack of community supervision for offenders not released prior to the expiration of their maximum term of



imprisonment, and offenders not being held accountable for paying restitution to victims while incarcerated or for their behavior after release from prison.

The pre-trial population has increased due to long lengths of stay. The purpose of Part I of the Bill is to provide the court with a more timely assessment of a pre-trial detainee's risk to reoffend or likelihood of not appearing for court. Section 353-10, HRS, is amended to require that an objective assessment is conducted within the first three working days of a person's commitment to a community correctional center in order to allow the courts to more quickly determine who is appropriate for release on their own recognizance, to supervision, or to bail.

The number of prisoners denied parole has increased. The purpose of Part II of the Bill is to increase the number of parole board members, require the parole board to use an objective risk assessment to determine which programs to require offenders to complete prior to release, in order to focus resources on the offenders most likely to benefit from programming and supervision, and to reduce recidivism by using swift and certain, yet less costly and severe responses to parole condition violations.

Act 92, Session Laws of Hawaii 1976, reconstituted the former uncompensated Board of Paroles and Pardons as a professional board entitled the Hawaii Paroling Authority with a full-time paid chair and two part-time paid members. Since that time, there has been no

increase in the number of members while the work load has increased by eight fold.

Research in the field of substance abuse treatment has shown that prisoners who present a low risk of reoffending are more successful when placed in community-based treatment, freeing up beds and program space for more serious offenders. Through the application of an objective risk assessment, the members of the Hawaii Paroling Authority will be able to determine whether a low-risk inmate is appropriate for release to a community-based treatment program.

Part III of the bill is to ensure accountability for victims and offenders by improving how restitution is collected by the department of public safety and ensuring all felony offenders are supervised for at least some minimum period of time after their release from incarceration.

Currently, victim restitution orders are enforced against ten percent of a prisoner's annual earnings while incarcerated. This Bill proposes that twenty-five percent of all monies earned, deposited or credited to an inmate's individual account be deducted to satisfy restitution orders.

National studies show inmates who are not released until their sentence expires, or "max out," are most likely to reoffend yet are not supervised in the community. Requiring a mandatory period of community supervision will promote public safety by providing transitional services, holding offenders accountable, and improving

safety to victims through offender supervision and safety planning.

Impact on the public: The public will benefit in three ways. First, refocusing treatment and supervision resources on higher risk criminal offenders will enhance public safety through reductions in recidivism as measured by re-offense rates for those placed on probation and/or released from incarceration. Second, more targeted and expansive restitution collection efforts by the Department will increase monetary collections that will in turn be provided to victims of crime. Third, by bringing prisoners back to Hawaii from out-of-state facilities, inmates will be closer to their families and better positioned to maintain important family ties. The strengthening of these relationships not only has the benefit of helping to keep families whole, but also assists prisoners in efforts to re-enter the community after periods of incarceration.

Impact on the Department and other agencies: The Department will see reductions in the demand for jail and prison capacity, which in turn will enable it to better focus treatment resources on those offenders most in need and most likely to benefit from such resource allocation. Furthermore, the reduction demand for jail and prison capacity will save money by allowing for reduction in the amount of money needed to contract for capacity out-of-state.

PPBS PROGRAM  
DESIGNATION:

PSD 611, PSD 612, PSD 913, and PSD 900.

GENERAL FUNDS: None.

OTHER FUNDS: None.

OTHER AFFECTED  
AGENCIES: The Judiciary and Hawaii Paroling  
Authority.

EFFECTIVE DATE: July 1, 2012, except Sections 3 and 10  
shall take effect January 1, 2013, and  
Sections 7, 8 and 12 shall take effect  
upon July 1, 2012,