
A BILL FOR AN ACT

RELATING TO DRUGS.

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

1 SECTION 1. Section 706-622.5, Hawaii Revised Statutes, is
2 amended by amending subsection (1) to read as follows.

3 "(1) [~~Notwithstanding~~] Except as provided by section 706-
4 620(3), a person convicted for the first time for any offense
5 under part IV of chapter 712 involving possession or use, not
6 including to distribute or manufacture as defined in section
7 712-1240, of any dangerous drug, detrimental drug, harmful drug,
8 intoxicating compound, marijuana, or marijuana concentrate, as
9 defined in section 712-1240, unlawful methamphetamine
10 trafficking as provided in section 712-1240.6, or involving
11 possession or use of drug paraphernalia under section 329-43.5,
12 is eligible to be sentenced to probation under subsection (2) if
13 the person meets the following criteria:

14 (a) The court has determined that the person is nonviolent
15 after reviewing the person's criminal history, the
16 factual circumstances of the offense for which the
17 person is being sentenced, and any other relevant
18 information;

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1 (b) The person has been assessed by a certified substance
2 abuse counselor to be in need of substance abuse
3 treatment due to dependency or abuse under the
4 applicable Diagnostic and Statistical Manual and
5 Addiction Severity Index; and

6 (c) Except for those persons directed to substance abuse
7 treatment under the supervision of the drug court, the
8 person presents a proposal to receive substance abuse
9 treatment in accordance with the treatment plan
10 prepared by a certified substance abuse counselor
11 through a substance abuse treatment program that
12 includes an identified source of payment for the
13 treatment program."

14 SECTION 3. Statutory material to be repealed is bracketed
15 and stricken. New statutory material is underscored.

16 SECTION 4. This Act shall take effect upon its approval.

17
18 INTRODUCED BY: _____

Calvin K. Day
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BY REQUEST
JAN 23 2006

JUSTIFICATION SHEET

DEPARTMENT: Attorney General

TITLE: A BILL FOR AN ACT RELATING TO DRUGS.

PURPOSE: To restore the previous law that provided for repeat offender sentencing for those convicted of repeatedly violating Hawaii's laws regarding illegal drugs.

MEANS: Amend section 706-622.5, Hawaii Revised Statutes.

JUSTIFICATION: Section 706-620(3), Hawaii Revised Statutes, originally included drug felonies in its repeat offender provisions. However, section 706-622.5 was recently amended to exclude any offense under part IV of chapter 712. Section 706-622.5 was promoted to the public as a means to save "first-time, non-violent drug offenders" from the effects of mandatory sentencing and to provide treatment instead of incarceration. This bill would leave intact that principle. However, when a defendant convicted of a drug offense has previous convictions for felonies, they should be sentenced in the same way as any other person who commits repeated felonies.

Impact on the public: This bill will be beneficial to the public interest because it will deter those who have been convicted of felonies from committing more felonies, with the current exception for those who are convicted under part IV of chapter 712.

Impact on the department and other agencies: This bill will help the department and other agencies because it will reduce the number of cases where convicted felons are arrested and convicted, only to be released on probation. These types of repeat felons use a disproportionate amount of police and judicial resources when they are released

without any term of incarceration and commit new offenses requiring further arrests and further prosecutions.

GENERAL FUND: None.

OTHER FUNDS: None.

PPBS PROGRAM DESIGNATION: None.

OTHER AFFECTED AGENCIES: Judiciary, county police, county prosecutors, and the Office of the Public Defender.

EFFECTIVE DATE: Upon approval.