
A BILL FOR AN ACT

RELATING TO CRIME.

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

1 SECTION 1. In June 2011, the governor, chief justice,
2 senate president, speaker of the house of representatives, and
3 director of public safety collaborated to develop 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 to reduce recidivism and crime
7 and increase public safety. The group sought assistance from
8 the Bureau of Justice Assistance, a division of the United
9 States Department of Justice, and the Pew Center on the States.
10 The group established a bipartisan, inter-branch justice
11 reinvestment working group comprising leading state and local
12 officials to receive intensive technical assistance from the
13 Council of State Governments Justice Center. The Council of
14 State Governments Justice Center assisted the working group in
15 analyzing data from Hawaii's criminal justice and corrections
16 systems.

17 The data analysis revealed that the rates of crime and
18 victimization and arrests and felony convictions for violent and



1 property crimes have declined. However, the incarcerated
2 population and the number of those under probation supervision,
3 in some cases, have increased. From fiscal year 2000 to fiscal
4 year 2011, the State's incarcerated population grew eighteen per
5 cent, from 5,118 to 6,043. Expenditures for the corrections
6 division of the department of public safety increased seventy
7 per cent, from \$112,000,000 in fiscal year 2000 to \$190,000,000
8 in fiscal year 2011. Approximately one-third of Hawaii's
9 incarcerated population is housed in out-of-state facilities.
10 The cost of housing offenders in out-of-state facilities was
11 \$45,000,000 in fiscal year 2011.

12 The analysis also identified other areas needing
13 improvement: the sentencing of felony drug offenders and
14 probation terms for offenders. The purpose of this Act is to
15 address those areas.

16 Under section 706-622.5, Hawaii Revised Statutes, the court
17 may impose a probation sentence for an offender's first felony
18 conviction for a drug possession offense. If an offender faces
19 a second felony conviction for drug possession and is subject to
20 the repeat offender statute, the court is required to impose a
21 prison sentence. This Act amends section 706-622.5, Hawaii



1 Revised Statutes, to allow second-time drug offenders to be
2 eligible for probation.

3 Probation terms for class B and C felons in Hawaii average
4 five years while the national average is three years. The risk
5 of recidivism is highest during the first and second year of
6 probation. Therefore, the public safety benefit of supervising
7 offenders for the third, fourth, and fifth years is less
8 significant. Moreover, supervising offenders for such long
9 periods requires resources that could be spent supervising
10 offenders who pose a higher risk or have recently been placed on
11 probation. This Act modifies the probation terms for certain
12 class B and C offenders to not exceed four years.

13 SECTION 2. Section 706-622.5, Hawaii Revised Statutes, is
14 amended as follows:

15 1. By amending the title to read:

16 "**§706-622.5 Sentencing for [~~first-time~~] drug offenders;**
17 **expungement.**"

18 2. By amending subsection (1) to read:

19 "(1) Notwithstanding section 706-620(3), a person
20 convicted for the first or second time for any offense under
21 section 329-43.5 involving the possession or use of drug
22 paraphernalia or any felony offense under part IV of chapter 712



1 involving the possession or use of any dangerous drug,
2 detrimental drug, harmful drug, intoxicating compound,
3 marijuana, or marijuana concentrate, as defined in section 712-
4 1240, but not including any offense under part IV of chapter 712
5 involving the distribution or manufacture of any such drugs or
6 substances and not including any methamphetamine trafficking
7 offenses under sections 712-1240.7 and 712-1240.8, is eligible
8 to be sentenced to probation under subsection (2) if the person
9 meets the following criteria:

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

15 (b) The person has been assessed by a certified substance
16 abuse counselor to be in need of substance abuse
17 treatment due to dependency or abuse under the
18 applicable Diagnostic and Statistical Manual and
19 Addiction Severity Index; and

20 (c) Except for those persons directed to substance abuse
21 treatment under the supervision of the drug court, the
22 person presents a proposal to receive substance abuse



1 treatment in accordance with the treatment plan
2 prepared by a certified substance abuse counselor
3 through a substance abuse treatment program that
4 includes an identified source of payment for the
5 treatment program."

6 3. By amending subsection (4) to read:

7 "(4) The court, upon written application from a person
8 sentenced under this part, shall issue a court order to expunge
9 the record of conviction for that particular offense; provided
10 that a person has successfully completed the substance abuse
11 treatment program and complied with other terms and conditions
12 of probation. A person sentenced to probation under this
13 section who has not previously been sentenced under this section
14 shall be eligible for one time only for expungement under this
15 subsection."

16 SECTION 3. Section 706-623, Hawaii Revised Statutes, is
17 amended by amending subsection (1) to read as follows:

18 "(1) When the court has sentenced a defendant to be placed
19 on probation, the period of probation shall be as follows,
20 unless the court enters the reason therefor on the record and
21 sentences the defendant to a shorter period of probation:

22 (a) Ten years upon conviction of a class A felony;



- 1 (b) Five years upon conviction of a class B or class C
2 felony[+] under part II, V, or VI of chapter 707,
3 chapter 709, and part I of chapter 712 and four years
4 upon conviction of any other class B or C felony;
- 5 (c) One year upon conviction of a misdemeanor; except that
6 upon a conviction under section 586-4, 586-11, or 709-
7 906, the court may sentence the defendant to a period
8 of probation not exceeding two years; or
- 9 (d) Six months upon conviction of a petty misdemeanor;
10 provided that up to one year may be imposed upon a
11 finding of good cause.
- 12 The court, on application of a probation officer, on application
13 of the defendant, or on its own motion, may discharge the
14 defendant at any time. Prior to granting early discharge, the
15 defendant's probation officer shall be required to report to the
16 court concerning the defendant's compliance or non-compliance
17 with the conditions of the defendant's probation and the court
18 shall afford the prosecuting attorney an opportunity to be
19 heard. The terms of probation provided in this part, other than
20 in this section, shall not apply to sentences of probation
21 imposed under section 706-606.3."



1 SECTION 4. Statutory material to be repealed is bracketed
2 and stricken. New statutory material is underscored.

3 SECTION 5. This Act shall take effect upon its approval;
4 provided that section 3 shall take effect on January 1, 2013,
5 and apply to offenses committed on or after that date.



Report Title:

Probation; Theft of Property; Sentencing

Description:

Allows a sentence of probation for certain second-time convictions for certain drug offenses. Allows probation for a period of four years for certain class B or class C felonies. Requires the defendant's probation officer to report to the court concerning compliance with the conditions of the defendant's probation. (HB2515 CD1)

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