
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, house speaker and director of public safety
3 joined together to begin developing a data-driven justice
4 reinvestment strategy to bring out-of-state prisoners back to
5 Hawaii, reduce spending on corrections, and reinvest savings
6 generated in strategies that will reduce recidivism and crime
7 and increase public safety. To this end, they sought assistance
8 from the Bureau of Justice Assistance, a division of the United
9 States Department of Justice, and the Pew Center on the States.
10 The state leaders 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 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 incarcerated
5 population and the number of those under probation supervision
6 have not declined, and in some cases have increased. From
7 fiscal year 2000 to fiscal year 2011, the State's prison and
8 jail population grew eighteen per cent, from 5,118 to 6,043.
9 During the same period, expenditures for the corrections
10 division of the department of public safety increased seventy
11 per cent, from \$112,000,000 in fiscal year 2000 to \$190,000,000
12 in fiscal year 2011. In addition, approximately one-third of
13 Hawaii's prison population is housed in out-of-state facilities.
14 The cost of housing these offenders out-of-state was \$45,000,000
15 in fiscal year 2011.

16 Analysis of the data from Hawaii's criminal justice and
17 corrections systems identified three areas for improvement:
18 sentencing of felony drug offenders, terms of probation, and
19 felony theft.

20 Under section 706-622.5, Hawaii Revised Statutes, the court
21 may impose a probation sentence for a felony drug possession
22 offense if it is the offender's first felony conviction for a



1 drug possession offense. If an offender faces a second felony
2 conviction for drug possession and is subject to the repeat
3 offender statute, the court must impose a prison sentence. This
4 Act amends section 706-622.5 to allow, but not require, the
5 court to impose a probation sentence upon a second conviction.

6 Probation terms for class B and C felons in Hawaii average
7 five years compared with the national average of three years.
8 The risk of recidivism is highest during the first and second
9 year of probation. Therefore, the public safety benefit of
10 supervising offenders for the third, fourth, and fifth year is
11 much less significant. Besides offering little benefit,
12 supervising offenders for such long periods requires resources
13 that could otherwise be spent more closely supervising offenders
14 who pose a higher risk or have recently been placed on
15 probation. This Act modifies the probation terms for certain
16 class B and C offenders to no more than three years.

17 The threshold property or services value for what
18 constitutes a class C felony theft offense is currently more
19 than \$300. This threshold has not been adjusted since 1986.
20 Felony theft thresholds for this class in states across the
21 country vary, but the average is over \$700. This Act amends
22 section 708-831, Hawaii Revised Statutes, to adjust the felony



1 theft threshold from \$300 to \$750 to adjust for inflation and
2 bring Hawaii more in line with other states.

3 SECTION 2. Section 706-622.5, Hawaii Revised Statutes, is
4 amended by amending the title to read as follows:

5 "**~~§706-622.5 Sentencing for [first-time] drug offenders;~~**
6 **expungement.**"

7 SECTION 3. Section 706-622.5. Hawaii Revised Statutes, is
8 amended by amending subsection (1) to read as follows:

9 "(1) Notwithstanding section 706-620(3), a person
10 convicted for the first or second time for any offense under
11 section 329-43.5 involving the possession or use of drug
12 paraphernalia or any felony offense under part IV of chapter 712
13 involving the possession or use of any dangerous drug,
14 detrimental drug, harmful drug, intoxicating compound,
15 marijuana, or marijuana concentrate, as defined in section 712-
16 1240, but not including any offense under part IV of chapter 712
17 involving the distribution or manufacture of any such drugs or
18 substances and not including any methamphetamine trafficking
19 offenses under sections 712-1240.7 and 712-1240.8, is eligible
20 to be sentenced to probation under subsection (2) if the person
21 meets the following criteria:



- 1 (a) The court has determined that the person is nonviolent
2 after reviewing the person's criminal history, the
3 factual circumstances of the offense for which the
4 person is being sentenced, and any other relevant
5 information;
- 6 (b) The person has been assessed by a certified substance
7 abuse counselor to be in need of substance abuse
8 treatment due to dependency or abuse under the
9 applicable Diagnostic and Statistical Manual and
10 Addiction Severity Index; and
- 11 (c) Except for those persons directed to substance abuse
12 treatment under the supervision of the drug court, the
13 person presents a proposal to receive substance abuse
14 treatment in accordance with the treatment plan
15 prepared by a certified substance abuse counselor
16 through a substance abuse treatment program that
17 includes an identified source of payment for the
18 treatment program."

19 SECTION 4. Section 706-622.5, Hawaii Revised Statutes, is
20 amended by amending subsection (4) to read as follows:

21 "(4) The court, upon written application from a person
22 sentenced under this part, shall issue a court order to expunge



1 the record of conviction for that particular offense; provided
2 that a person has successfully completed the substance abuse
3 treatment program and complied with other terms and conditions
4 of probation. A person sentenced to probation under this
5 section who has not previously been sentenced under this section
6 shall be eligible for one time only for expungement under this
7 subsection."

8 SECTION 5. Section 706-623, Hawaii Revised Statutes, is
9 amended by amending subsection (1) to read as follows:

10 "(1) When the court has sentenced a defendant to be placed
11 on probation, the period of probation shall be as follows,
12 unless the court enters the reason therefor on the record and
13 sentences the defendant to a shorter period of probation:

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

15 (b) Five years upon conviction of a class B or class C
16 felony[+] under parts II, V, or VI of chapter 707,
17 chapter 709, and part I of chapter 712 and three years
18 upon conviction of any other class B or C felony;

19 (c) One year upon conviction of a misdemeanor; except that
20 upon a conviction under section 586-4, 586-11, or 709-
21 906, the court may sentence the defendant to a period
22 of probation not exceeding two years; or



1 (d) Six months upon conviction of a petty misdemeanor;
2 provided that up to one year may be imposed upon a
3 finding of good cause.

4 The court, on application of a probation officer, on
5 application of the defendant, or on its own motion, may
6 discharge the defendant at any time. Prior to granting early
7 discharge, the court shall afford the prosecuting attorney an
8 opportunity to be heard. The terms of probation provided in
9 this part, other than in this section, shall not apply to
10 sentences of probation imposed under section 706-606.3."

11 SECTION 6. Section 708-831, Hawaii Revised Statutes, is
12 amended by amending subsection (1) to read as follows:

13 "(1) A person commits the offense of theft in the second
14 degree if the person commits theft:

15 (a) Of property from the person of another;

16 (b) Of property or services the value of which exceeds
17 [~~\$300~~] \$750;

18 (c) Of an aquacultural product or part thereof from
19 premises that is fenced or enclosed in a manner
20 designed to exclude intruders or there is prominently
21 displayed on the premises a sign or signs sufficient



1 to give notice and reading as follows: "Private
2 Property"; or
3 (d) Of agricultural equipment, supplies, or products, or
4 part thereof, the value of which exceeds \$100 but does
5 not exceed \$20,000, or of agricultural products that
6 exceed twenty-five pounds, from premises that are
7 fenced, enclosed, or secured in a manner designed to
8 exclude intruders or there is prominently displayed on
9 the premises a sign or signs sufficient to give notice
10 and reading as follows: "Private Property". The sign
11 or signs, containing letters not less than two inches
12 in height, shall be placed along the boundary line of
13 the land in a manner and in such position as to be
14 clearly noticeable from outside the boundary line.
15 Possession of agricultural products without ownership
16 and movement certificates, when a certificate is
17 required pursuant to chapter 145, is prima facie
18 evidence that the products are or have been stolen."

19 SECTION 7. Statutory material to be repealed is bracketed
20 and stricken. New statutory material is underscored.



1 SECTION 8. This Act shall take effect on July 1, 2012;
2 provided that section 5 shall apply to persons committing
3 offenses on or after January 1, 2013.



Report Title:

Probation; Theft of Property; Sentencing

Description:

Permits a sentence of probation for certain second-time drug offenders and a three-year probation term for individuals convicted of certain class B and C felonies. Increases the threshold property and services valuation for theft in the second degree to more than \$750. Effective July 1, 2012.
(HB2515 HD1)

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

