
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 collaborated to develop a data-driven justice reinvestment
4 strategy to bring out-of-state prisoners back to Hawaii, reduce
5 spending on corrections, and reinvest savings generated in
6 strategies to reduce recidivism and crime and increase public
7 safety. The group sought assistance from the Bureau of Justice
8 Assistance, a division of the United States Department of
9 Justice, and the Pew Center on the States. The group
10 established a bipartisan, inter-branch justice reinvestment
11 working group comprising leading state and local officials to
12 receive intensive technical assistance from the Council of State
13 Governments Justice Center. The Council of State Governments
14 Justice Center assisted the working group in analyzing data from
15 Hawaii's criminal justice and corrections systems.

16 The analysis revealed that the rates of crime and
17 victimization and arrests and felony convictions for violent and
18 property crimes have declined. However, the incarcerated



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

11 The analysis also identified three areas needing
12 improvement: the sentencing of felony drug offenders, probation
13 terms for offenders, and the threshold amount for felony theft.
14 The purpose of this Act is to address those areas.

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



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

11 Currently, the threshold property or services value for a
12 class C felony theft offense is \$300. That threshold has not
13 been adjusted since 1986. The requirements for a felony theft
14 vary by state, but the average threshold amount is over \$700.
15 This Act amends section 708-831, Hawaii Revised Statutes, to
16 adjust the felony theft threshold from \$300 to \$750 to make the
17 statute comparable with those of other states.

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

20 1. By amending the title to read:

21 "**§706-622.5 Sentencing for [~~first-time~~] drug offenders;**
22 **expungement.**"



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

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

20 (b) The person has been assessed by a certified substance
21 abuse counselor to be in need of substance abuse
22 treatment due to dependency or abuse under the



1 applicable Diagnostic and Statistical Manual and
 2 Addiction Severity Index; and
 3 (c) Except for those persons directed to substance abuse
 4 treatment under the supervision of the drug court, the
 5 person presents a proposal to receive substance abuse
 6 treatment in accordance with the treatment plan
 7 prepared by a certified substance abuse counselor
 8 through a substance abuse treatment program that
 9 includes an identified source of payment for the
 10 treatment program."

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

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

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



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

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

6 (b) Five years upon conviction of a class B or class C
7 felony[+] under part II, V, or VI of chapter 707,
8 chapter 709, and part I of chapter 712 and three years
9 upon conviction of any other class B or C felony;

10 (c) One year upon conviction of a misdemeanor; except that
11 upon a conviction under section 586-4, 586-11, or 709-
12 906, the court may sentence the defendant to a period
13 of probation not exceeding two years; or

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

17 The court, on application of a probation officer, on application
18 of the defendant, or on its own motion, may discharge the
19 defendant at any time. Prior to granting early discharge, the
20 defendant's probation officer shall be required to report to the
21 court concerning the defendant's compliance or non-compliance
22 with the conditions of probation and the court shall afford the



1 prosecuting attorney an opportunity to be heard. The terms of
2 probation provided in this part, other than in this section,
3 shall not apply to sentences of probation imposed under section
4 706-606.3."

5 SECTION 4. Section 708-831, Hawaii Revised Statutes, is
6 amended by amending subsection (1) to read as follows:

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

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

10 (b) Of property or services the value of which exceeds
11 [~~\$300~~] \$750;

12 (c) Of an aquacultural product or part thereof from
13 premises that is fenced or enclosed in a manner
14 designed to exclude intruders or there is prominently
15 displayed on the premises a sign or signs sufficient
16 to give notice and reading as follows: "Private
17 Property"; or

18 (d) Of agricultural equipment, supplies, or products, or
19 part thereof, the value of which exceeds \$100 but does
20 not exceed \$20,000, or of agricultural products that
21 exceed twenty-five pounds, from premises that are
22 fenced, enclosed, or secured in a manner designed to



1 exclude intruders or there is prominently displayed on
2 the premises a sign or signs sufficient to give notice
3 and reading as follows: "Private Property". The sign
4 or signs, containing letters not less than two inches
5 in height, shall be placed along the boundary line of
6 the land in a manner and in such position as to be
7 clearly noticeable from outside the boundary line.
8 Possession of agricultural products without ownership
9 and movement certificates, when a certificate is
10 required pursuant to chapter 145, is prima facie
11 evidence that the products are or have been stolen."

12 SECTION 5. Statutory material to be repealed is bracketed
13 and stricken. New statutory material is underscored.

14 SECTION 6. This Act shall take effect on January 7, 2059;
15 provided that section 3 shall take effect on January 1, 2013,
16 and apply to offenses committed on or after that date.



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 January 7, 2059. (HB2515 HD3)

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

