
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 four years.

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

13 1. By amending the title to read:

14 "§706-622.5 Sentencing for [~~first-time~~] drug offenders;
15 expungement."

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

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



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

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

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

18 (c) Except for those persons directed to substance abuse
19 treatment under the supervision of the drug court, the
20 person presents a proposal to receive substance abuse
21 treatment in accordance with the treatment plan
22 prepared by a certified substance abuse counselor



1 through a substance abuse treatment program that
2 includes an identified source of payment for the
3 treatment program."

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

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

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

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

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

21 (b) Five years upon conviction of a class B or class C
22 felony[+] under part II, V, or VI of chapter 707,



1 chapter 709, and part I of chapter 712 and four years
2 upon conviction of any other class B or C felony;

3 (c) One year upon conviction of a misdemeanor; except that
4 upon a conviction under section 586-4, 586-11, or 709-
5 906, the court may sentence the defendant to a period
6 of probation not exceeding two years; or

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

10 The court, on application of a probation officer, on application
11 of the defendant, or on its own motion, may discharge the
12 defendant at any time. Prior to granting early discharge, the
13 defendant's probation officer shall be required to report to the
14 court concerning the defendant's compliance or non-compliance
15 with the conditions of probation and the court shall afford the
16 prosecuting attorney an opportunity to be heard. The terms of
17 probation provided in this part, other than in this section,
18 shall not apply to sentences of probation imposed under section
19 706-606.3."

20 SECTION 4. Statutory material to be repealed is bracketed
21 and stricken. New statutory material is underscored.

22 SECTION 5. This Act shall take effect upon its approval.

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 or non-compliance with conditions of probation. (SD1)

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