

JAN 25 2012

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 Department of Public Safety
3 Director joined together to begin developing 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 that would reduce recidivism and
7 crime, and increase public safety. To this end, they sought
8 assistance from the Bureau of Justice Assistance, a division of
9 the U.S. Department of Justice, and the Pew Center on the
10 States. The state leaders established a bipartisan, inter-
11 branch Justice Reinvestment Working Group comprising leading
12 state and local officials to receive intensive technical
13 assistance from the Council of State Governments (CSG) Justice
14 Center. The CSG 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 population under
5 probation supervision and incarcerated has not declined, and in
6 some cases has increased. From FY 2000 to FY 2011, the state's
7 prison and jail population grew 18 percent, from 5,118 to 6,043.
8 During the same period, expenditures for the Corrections
9 Division of the Department of Public Safety increased 70
10 percent, from \$112 million in FY 2000 to \$190 million in FY
11 2011. Approximately one-third of Hawaii's prison population is
12 housed in out-of-state facilities on the mainland. The cost of
13 housing these offenders out-of-state was \$45 million in FY 2011.

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

18 Under Section 706-622.5, Hawaii Revised Statutes, the court
19 may impose a probation sentence for a felony drug possession
20 offense if it is the offender's first felony conviction for a
21 drug possession offense. If an offender faces his or her second
22 felony conviction for drug possession and is subject to the
23 repeat offender statute, the court must impose a prison

1 sentence. The purpose of this part of the bill is to amend
2 section 706-622.5 to allow, but not require, the court to impose
3 a probation sentence upon a second conviction.

4 Probation terms for Class B and C felons in Hawaii average
5 five years compared with the national average of three years.
6 The risk of recidivism is most likely during the first and
7 second year of probation. Therefore, the public safety benefit
8 of supervising offenders for the third, fourth, and fifth year
9 is much less significant. Besides offering little benefit,
10 supervising offenders for such long periods requires resources
11 that otherwise could be spent supervising offenders who pose a
12 higher risk or have recently been placed on probation much more
13 closely. Section 706-623, Hawaii Revised Statutes, is amended
14 to modify the probation terms for Class B and C offenders to no
15 more than three years. Language is added to the section to
16 create an incentive time credit for persons on probation to
17 comply with the conditions of supervision. The new language
18 permits the court to reduce the probation term upon the
19 recommendation of the probation officer based on specific
20 criteria set forth in the new language.

21 The threshold for what constitutes a Class C felony theft
22 offense is currently \$300 and has not been adjusted since 1986.
23 Felony theft thresholds in states across the country vary, but

S.B. NO. 2777

1 the average is more than \$700. The purpose of this part of the
2 bill is to amend section 708-831, Hawaii Revised Statutes, to
3 adjust the felony theft threshold from \$300 to \$750 to adjust
4 for inflation and bring Hawaii more in line with other state
5 statutes.

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

8 **"§706-622.5 Sentencing for [~~first-time~~] drug offenders;
9 expungement."**

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

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

1 to be sentenced to probation under subsection (2) if the person
2 meets the following criteria:

3 (a) The court has determined that the person is nonviolent
4 after reviewing the person's criminal history, the
5 factual circumstances of the offense for which the
6 person is being sentenced, and any other relevant
7 information;

8 (b) The person has been assessed by a certified substance
9 abuse counselor to be in need of substance abuse
10 treatment due to dependency or abuse under the
11 applicable Diagnostic and Statistical Manual and
12 Addiction Severity Index; and

13 (c) Except for those persons directed to substance abuse
14 treatment under the supervision of the drug court, the
15 person presents a proposal to receive substance abuse
16 treatment in accordance with the treatment plan
17 prepared by a certified substance abuse counselor
18 through a substance abuse treatment program that
19 includes an identified source of payment for the
20 treatment program."

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

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

10 SECTION 5. Section 706-623, Hawaii Revised Statutes, is
11 amended to read as follows:

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

- 16 (a) Ten years upon conviction of a class A felony;
- 17 (b) Five years upon conviction of a class B or class C
18 felony[+] under parts V or VI of chapter 707, and
19 three years upon conviction of any other class B or C
20 felony;
- 21 (c) One year upon conviction of a misdemeanor; except that
22 upon a conviction under section 586-4, 586-11, or 709-

S.B. NO. 2777

1 906, the court may sentence the defendant to a period
2 of probation not exceeding two years; or

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

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

13 (2) When a defendant who is sentenced to probation has
14 previously been detained in any state or county correctional or
15 other institution following arrest for the crime for which
16 sentence is imposed, the period of detention following arrest
17 shall be deducted from the term of imprisonment if the term is
18 given as a condition of probation. The pre-sentence report
19 shall contain a certificate showing the length of such detention
20 of the defendant prior to sentence in any state or county
21 correctional or other institution, and the certificate shall be
22 annexed to the official records of the defendant's sentence.

1 (3) The court may adjust the period of a probationer's
2 supervised probation on the recommendation of an adult probation
3 officer for incentive time credit. Incentive time credit equals
4 an additional twenty days earned for every thirty days that a
5 probationer does all of the following:

6 (a) Exhibits positive progression toward the goals and
7 treatment of the probationer's case plan;

8 (b) Is current on payments for court ordered restitution
9 and other financial obligations; and,

10 (c) Is current in completing community service.

11 Any incentive time credit awarded pursuant to this section shall
12 be revoked if a probationer is found in violation of a condition
13 of probation. This section has no effect on the ability of the
14 court to terminate the period of probation pursuant to section
15 (1) at a time earlier than originally imposed."

16 SECTION 6. Section 708-831, Hawaii Revised Statutes, is
17 amended by amending section (1) to read as follows:

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

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

21 (b) Of property or services the value of which exceeds

22 ~~[\$300]~~ \$750;

S.B. NO. 2777

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

S.B. NO. 2777

1 SECTION 7. Statutory material to be repealed is bracketed
2 and stricken. New statutory material is underscored.

3 SECTION 8. This Act shall take effect for those committing
4 offenses on or after July 1, 2012 except for the following
5 section. Section 5 shall take effect for those committing
6 offenses on or after January 1, 2013.

7

8

9

INTRODUCED BY: 

BY REQUEST

10

S.B. NO. 2777

Report Title:

Relating to Crime.

Description:

To promulgate law effecting implementation of criminal justice system policies and practices that would address inefficiencies in processing pretrial defendants, improve the targeting and allocation of resources aimed at reducing recidivism, and strengthening accountability by offenders.

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

JUSTIFICATION SHEET

DEPARTMENT: Office of the Governor.

TITLE: A BILL FOR AN ACT RELATING TO CRIME.

PURPOSE: To promulgate law effecting implementation of criminal justice system policies and practices that would address inefficiencies in processing pretrial defendants, improve the targeting and allocation of resources aimed at reducing recidivism, and strengthening accountability by offenders.

MEANS: Amend sections 706-622.5, 706-623, and 708-831, Hawaii Revised Statutes.

JUSTIFICATION: In June 2011, the Governor, Chief Justice, Senate President, House Speaker and Department of Public Safety Director joined together to begin developing a data-driven justice reinvestment strategy to bring out-of-state prisoners back to Hawaii, reduce spending on corrections, and reinvest savings generated in strategies that would reduce recidivism and crime, and increase public safety. To this end, they sought assistance from the Bureau of Justice Assistance, a division of the U.S. Department of Justice, and the Pew Center on the States. The state leaders established a bipartisan, inter-branch Justice Reinvestment Working Group comprising leading state and local officials to receive intensive technical assistance from the Council of State Governments (CSG) Justice Center. The CSG Justice Center assisted the working group in analyzing data from every aspect of the Hawaii's criminal justice and corrections system.

Overall, the analysis found that crime and victimization rates have declined since 1997. Subsequently, so have arrests and felony convictions for violent and property crime

Despite these declines in crime and the criminal justice system's initial response,

the population under probation supervision and incarcerated has not declined, and in some cases has increased. From 2006 to 2010, the state's probation population increased 11%, from 16,079 to 17,771. From FY 2000 to FY 2011, the state's prison population grew 18 percent, from 5,118 to 6,043. During the same period, expenditures for the Corrections Division of the Department of Public Safety increased 63 percent, from \$112 million in FY 2000 to \$190 million in FY 2011.

Approximately one-third of Hawaii's prison population is housed in out-of-state facilities on the mainland. The cost of housing these offenders out-of-state was \$45 million in FY 2011.

The analysis identified that that judges lack the discretion to impose a probation sentence for a drug possession offense if it is the offender's second conviction; probation terms in Hawaii are much longer, but without benefit to public safety, than the rest of the country; and the threshold for what constitutes a Class C felony theft offense has not been adjusted since 1986 and is much lower than the national average.

The lack of discretion in sentencing low severity drug offenders and exceptionally long probation terms relative to other states results in a less effective allocation of scarce criminal justice resources.

Under Section 706-622.5 the court can only impose a probation sentence for a felony drug possession offense if it is the offender's first conviction. If an offender faces his or her second felony conviction for drug possession, the court must impose a prison sentence. The purpose of this part of the bill is to amend section 706-622.5 to allow, but not require, the court to impose a probation sentence upon a second conviction.

Probation terms for Class B and C felons in Hawaii are much longer at five years than the national average of three years. The risk of recidivism is most likely during the first and second year of probation, and therefore the public safety benefit of supervising offenders for the third, fourth, and fifth year is much less significant. Besides offering little benefit, supervising offenders for such long periods requires resources that otherwise could be spent supervising offenders who pose a higher risk or have recently been placed on probation much more closely. Section 706-623 is amended to modify the probation terms for Class B and C offenders to no more than three years, with some exceptions. Language is added to the section to create an earned credit incentive for persons on probation to comply with the conditions of supervision. The new language permits the court to reduce the probation term upon the recommendation of the probation officer based on specific criteria set forth in the new language.

The threshold for what constitutes a Class C felony theft offense is currently \$300 and has not been adjusted since 1986. Felony theft thresholds in states across the country vary, but the average is over \$750. The purpose of this part of the bill is to amend section 708-831 to adjust the felony theft threshold from \$300 to \$750 to adjust for inflation and bring Hawaii in line with other state statutes.

Impact on the public: The public will benefit by refocusing treatment and supervision resources on higher risk criminal offenders and enhancing public safety through reductions in recidivism as measured by re-offense rates for those placed on probation.

Impact on the Department and other agencies: The Department of Public Safety will see substantial reductions in the demand for jail and prison capacity, which in turn will enable it to better focus treatment resources on

those offenders most in need and most likely to benefit from such resource allocation. Furthermore, the reduction demand for jail and prison capacity will save money by allowing for reduction in the amount of money needed to contract for capacity out-of-state.

PPBS PROGRAM
DESIGNATION: Not applicable.

GENERAL FUNDS: None.

OTHER FUNDS: None.

OTHER AFFECTED
AGENCIES: The Judiciary, county prosecutors, and the Departments of the Attorney General and Public Safety.

EFFECTIVE DATE: July 1, 2012, except Section 5 shall take effect January 1, 2013.