
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 would reduce recidivism and crime,
7 and increase public safety. To this end, the State sought
8 assistance from the Bureau of Justice Assistance, a division of
9 the United States Department of Justice, and the Pew Center on
10 the 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 Justice Center.
14 The Council of State Governments Justice Center assisted the
15 working group in analyzing data from every aspect of Hawaii's
16 criminal justice 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 July 1, 1999, to June 30, 2011,
7 the State's prison and jail population grew eighteen per cent,
8 from 5,118 to 6,043. During the same period, expenditures for
9 the corrections division of the department of public safety
10 increased seventy per cent, from \$112,000,000 to \$190,000,000.
11 Approximately one-third of Hawaii's prison population is housed
12 in out-of-state facilities on the mainland. The cost of housing
13 these offenders out-of-state was \$45,000,000 from July 1, 2010,
14 to June 30, 2011. Analysis of the data from Hawaii's criminal
15 justice and corrections systems identified three areas for
16 improvement: sentencing of felony drug offenders, terms of
17 probation, and 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 a second felony
22 conviction for drug possession and is subject to a sentence of



1 repeat offenders under section 706-606.5, Hawaii Revised
2 Statutes, the court must impose a prison sentence. The purpose
3 of this Act is to allow, but not require, the court to impose a
4 probation sentence upon a second conviction.

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

21 The threshold for what constitutes a class C felony theft
22 offense under section 708-831, Hawaii Revised Statutes, is



1 currently \$300 and has not been amended since 1986. Felony
2 theft thresholds in states across the country vary, but the
3 average is more than \$700. The purpose of this Act is to adjust
4 the felony theft threshold from \$300 to \$750 to adjust for
5 inflation and bring Hawaii more in line with other states.

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

8 1. By amending the title to read:

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

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

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
19 712-1240, but not including any offense under part IV of chapter
20 712 involving the distribution or manufacture of any such drugs
21 or 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 .3. By amending subsection (4) to read:



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 section
8 shall be eligible for one time only for expungement under this
9 subsection."

10 SECTION 3. Section 706-623, Hawaii Revised Statutes, is
11 amended to read as follows:

12 "**§706-623 Terms of probation.** (1) When the court has
13 sentenced a defendant to be placed on probation, the period of
14 probation shall be as follows, unless the court enters the
15 reason therefor on the record and sentences the defendant to a
16 shorter period of probation:

- 17 (a) Ten years upon conviction of a class A felony;
18 (b) Five years upon conviction of a class B or class C
19 felony[+] under part V or VI of chapter 707, and three
20 years upon conviction of any other class B or C
21 felony;



- 1 (c) One year upon conviction of a misdemeanor; except that
2 upon a conviction under section 586-4, 586-11, or
3 709-906, the court may sentence the defendant to a
4 period of probation not exceeding two years; or
- 5 (d) Six months upon conviction of a petty misdemeanor;
6 provided that up to one year may be imposed upon a
7 finding of good cause.

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

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



1 correctional or other institution, and the certificate shall be
2 annexed to the official records of the defendant's sentence.

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

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

10 (b) Is current on payments for court ordered restitution
11 and other financial obligations; and

12 (c) Is current in completing community service.

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

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

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

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



- 1 (b) Of property or services the value of which exceeds
2 [~~\$300+~~] \$750;
- 3 (c) Of an aquacultural product or part thereof from
4 premises that is fenced or enclosed in a manner
5 designed to exclude intruders or there is prominently
6 displayed on the premises a sign or signs sufficient
7 to give notice and reading as follows: "Private
8 Property"; or
- 9 (d) Of agricultural equipment, supplies, or products, or
10 part thereof, the value of which exceeds \$100 but does
11 not exceed \$20,000, or of agricultural products that
12 exceed twenty-five pounds, from premises that are
13 fenced, enclosed, or secured in a manner designed to
14 exclude intruders or there is prominently displayed on
15 the premises a sign or signs sufficient to give notice
16 and reading as follows: "Private Property". The sign
17 or signs, containing letters not less than two inches
18 in height, shall be placed along the boundary line of
19 the land in a manner and in such position as to be
20 clearly noticeable from outside the boundary line.
21 Possession of agricultural products without ownership
22 and movement certificates, when a certificate is



1 required pursuant to chapter 145, is prima facie
2 evidence that the products are or have been stolen."

3 SECTION 5. Statutory material to be repealed is bracketed
4 and stricken. New statutory material is underscored.

5 SECTION 6. This Act shall take effect on July 1, 2012;
6 provided that section 3 shall take effect on January 1, 2013.



Report Title:

Crime; Probation

Description:

Amends eligibility for probation to include second time offenders for certain drug offenses. Allows one-time expungement of drug conviction record for a person sentenced to probation without a previous sentence to probation for a drug offense. Reduces the time of probation from five to three years for class B and class C felonies, except sexual offenses and child abuse. Establishes incentive time credit for probationers to reduce time on probation. Increases threshold amount from \$300 to \$750 for theft in the second degree. (SD1)

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