

---

---

## A BILL FOR AN ACT

RELATING TO MENTAL ILLNESS AND EXPANDING THE HAWAII OPPORTUNITY  
PROBATION WITH ENFORCEMENT PROGRAM.

**BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF HAWAII:**

1           SECTION 1. The legislature finds that severe mental  
2 illness and addiction poses a clear and present danger to our  
3 state when left untreated. A recent tragedy in Diamond Head  
4 illustrates the most extreme consequence of failing to provide  
5 psychiatric care to those in need.

6           The legislature finds severe mental illness can be a major  
7 cause of chronic homelessness. According to the National  
8 Alliance for the Mentally Ill one in twenty persons with a  
9 severe mental illness is homeless. Unsheltered chronic homeless  
10 live thirty years less than average. They also strain emergency  
11 medical services costing the state millions of dollars while  
12 reducing the availability of emergency care for others.

13           The legislature also finds mentally impaired homeless often  
14 resist services including shelter, psychiatric care, and  
15 treatment for substance abuse. Some do not realize they are



1 sick and need help while others are simply unable to think  
2 rationally.

3 The legislature also finds that the government is  
4 constitutionally prohibited from forcing impaired persons into  
5 treatment. Until the 1970's, many mentally ill people, who were  
6 not dangerous and capable of living independently, were locked-  
7 away in mental institutions for life, with little recourse. The  
8 U.S. Supreme Court held that confinement in a mental  
9 institution, or compelling someone to take medication,  
10 infringed upon fundamental constitutional liberties. As a  
11 result, a person can only be forced into treatment if they  
12 commit a dangerous act or is proved to be an imminent danger to  
13 themselves or others. The unintended consequence is many who  
14 need treatment end up in jail or prison instead.

15 The legislature further finds that unsheltered homeless who  
16 suffer severe mental impairments may find it difficult to  
17 comport their conduct to civil norms. They may behave in bizarre  
18 and inappropriate ways, violating the rights of others. Some  
19 congregate in unsanitary homeless camps that incubate disease,  
20 light campfires that pose a danger to surrounding communities  
21 and leave piles of trash in parks and beaches. Some commit petty



1 thefts and other crimes; As serial petty misdemeanor and  
2 misdemeanor offenders, they may cycle endlessly between jails,  
3 emergency rooms and the streets.

4 The legislature finds impaired offenders who struggle and  
5 finally overcome addiction or mental illness often find their  
6 criminal records are a barrier to employment and housing.  
7 Therefore, there should be a way for rehabilitated misdemeanor  
8 offenders to seal their records if they don't re-offend.

9 The legislature further finds that the judiciary's Hawaii  
10 Opportunity Probation with Enforcement program has achieved  
11 extraordinary results with felons, many of whom suffered from  
12 addiction and other forms of mental illness. Participants were  
13 fifty-five per cent less likely to be arrested for a new crime  
14 and seventy-two per cent less likely to use drugs. The program  
15 works by combining robust supportive services with "swift and  
16 sure" consequences for parole violations, coupled with multiple  
17 opportunities for redemption.

18 The legislature finds expanding Hawaii's Opportunity  
19 Probation with Enforcement program ("HOPE") as a pilot program,  
20 to include repeat petty-misdemeanor and misdemeanor offenders  
21 may encourage more homeless to obtain treatment and services.



1           The purposes of this Act are to:

2           (1) Establish a pilot program, expanding HOPE probation to  
3 include severely mentally impaired individuals convicted of  
4 misdemeanor offences and those of a lesser degree, court-ordered  
5 mental health care, substance abuse treatment, and other  
6 supportive services as an alternative to jail.

7           (2) Enable offenders to have certain criminal records  
8 sealed if they successfully complete HOPE probation, and do not  
9 re-offend.

10           This Act shall be known and may be cited as the "Help for  
11 HOPE Act" and the purpose of the Act is to establish a HOPE  
12 pilot program within the judiciary.

13           SECTION 2. (a) The judiciary shall establish a five-year  
14 pilot program to allow defendants in criminal cases, and those  
15 currently incarcerated, that suffer from substance addiction,  
16 mental illness, homelessness, or other catastrophic afflictions,  
17 at the time of committing any offense, to participate in a pilot  
18 HOPE program; provided that any defendant in a criminal case  
19 involving a charged offense classified as a class A or B felony  
20 or that is a violent crime shall not be eligible to participate  
21 in the pilot program.



1           (b) During or prior to a pretrial conference held pursuant  
2 to rule 17.1 of the Hawaii rules of penal procedure, the court  
3 shall inform each eligible defendant of the right to request  
4 entrance into the HOPE pilot program as an alternative to jail.

5           (c) A defendant's participation in the pilot program shall  
6 require court approval and agreement of the victim.

7           (d) Notwithstanding any other law to the contrary and upon  
8 successful completion of any restorative justice process,  
9 approval of the victim, and approval of the prosecuting  
10 attorney, the court may seal the record of the offender.

11           (e) The judiciary shall inform the following individuals  
12 in writing of the existence of the pilot program:

13           (1) The attorney general;

14           (2) The public defender;

15           (3) The prosecuting attorneys of each county; and

16           (4) The registered members of the criminal justice and  
17 corrections section of the Hawaii State Bar  
18 Association.

19           (f) The judiciary shall submit interim reports of the  
20 pilot program to the legislature no later than twenty days prior  
21 to the convening of the regular sessions of 2021, 2022, 2023,



1 and 2024, and shall submit a final report to the legislature no  
2 later than twenty days prior to the convening of the regular  
3 session of 2025. The reports shall include information and  
4 recommendations about the efficacy of and the costs associated  
5 with the pilot program. The final report shall also include a  
6 recommendation on whether the pilot program should be made  
7 permanent.

8 (g) For the purpose of this Act:

9 "HOPE" means The Hawaii's Opportunity Probation with  
10 Enforcement program, and similar programs that provide close  
11 supervision of probationers, immediate sanctions for violating  
12 their terms of probation, and supportive services with  
13 opportunities for redemption.

14 "Violent crime" shall mean the crimes enumerated in section  
15 351-32, Hawaii Revised Statutes.

16 SECTION 3. There is appropriated out of the general  
17 revenues of the State of Hawaii the sum of \$ or so much  
18 thereof as may be necessary for fiscal year 2020-2021 and the  
19 same sum or so much thereof as may be necessary for fiscal year  
20 2021-2022 for the HOPE pilot program.



1 The sums appropriated shall be expended by the judiciary  
2 for the purposes of this Act.

3 SECTION 4. This Act shall take effect on July 1, 2020.

INTRODUCED BY:

*Stan Leung*  
*John M. Madsen*  
*Jim Kim*  
*Rida Corbitt Akawa*  
*Dan Carnas*  
*RL S. O. S.*  
*Calvin K. Soy*

JAN 23 2020



# H.B. NO. 2730

**Report Title:**

Hawaii's Opportunity Probation with Enforcement; Homeless; Pilot

**Description:**

Codifies the courts' option to sentence defendants to probation under pilot programs, including HOPE. Authorizes current impaired offenders to convert the remainder of their terms. Authorizes courts to seal the criminal records of impaired offenders who complete alternative or pilot programs.

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

