
A BILL FOR AN ACT

RELATING TO PROBATION.

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

1 SECTION 1. Chapter 571, Hawaii Revised Statutes, is
2 amended by adding a new section to part V to be appropriately
3 designated and to read as follows:

4 "§571- Mandatory revocation of probation; sexual
5 assault; strict compliance. Notwithstanding any provision of
6 this part to the contrary, the court shall revoke probation if
7 the child has failed to strictly comply with any condition of
8 the order, if the offense for which the child was placed on
9 probation was any sexual assault offense under part V of chapter
10 707 and the victim of the offense was an individual under the
11 age of eighteen when the offense was committed."

12 SECTION 2. Section 706-625, Hawaii Revised Statutes, is
13 amended to read as follows:

14 "§706-625 Revocation, modification of probation
15 conditions. (1) The court, on application of a probation
16 officer, the prosecuting attorney, the defendant, or on its own
17 motion, after a hearing, may revoke probation except as provided



1 in subsection (7), reduce or enlarge the conditions of a
2 sentence of probation, pursuant to the provisions applicable to
3 the initial setting of the conditions and the provisions of
4 section 706-627.

5 (2) The prosecuting attorney, the defendant's probation
6 officer, and the defendant shall be notified by the movant in
7 writing of the time, place, and date of any such hearing, and of
8 the grounds upon which action under this section is proposed.
9 The prosecuting attorney, the defendant's probation officer, and
10 the defendant may appear in the hearing to oppose or support the
11 application, and may submit evidence for the court's
12 consideration. The defendant shall have the right to be
13 represented by counsel. For purposes of this section the court
14 shall not be bound by the Hawaii rules of evidence, except for
15 the rules pertaining to privileges.

16 (3) The court shall revoke probation if the defendant has
17 inexcusably failed to comply with a substantial requirement
18 imposed as a condition of the order or has been convicted of a
19 felony. The court may revoke the suspension of sentence or
20 probation if the defendant has been convicted of another crime
21 other than a felony.



1 (4) Notwithstanding subsection (3), the court shall revoke
2 probation if the defendant has failed to strictly comply with
3 any condition of the order, if the offense for which the
4 defendant was sentenced to probation was any sexual assault
5 offense under part V of chapter 707 and the victim of the
6 offense was a minor under the age of eighteen when the offense
7 was committed.

8 [~~4~~] (5) The court may modify the requirements imposed on
9 the defendant or impose further requirements, if it finds that
10 such action will assist the defendant in leading a law-abiding
11 life.

12 [~~5~~] (6) When the court revokes probation, it may impose
13 on the defendant any sentence that might have been imposed
14 originally for the crime of which the defendant was convicted.

15 [~~6~~] (7) As used in this section, "conviction" means that
16 a judgment has been pronounced upon the verdict.

17 [~~7~~] (8) The court may require a defendant to undergo and
18 complete a substance abuse treatment program when the defendant
19 has committed a violation of the terms and conditions of
20 probation involving possession or use, not including to
21 distribute or manufacture as defined in section 712-1240, of any



1 dangerous drug, detrimental drug, harmful drug, intoxicating
2 compound, marijuana, or marijuana concentrate, as defined in
3 section 712-1240, unlawful methamphetamine trafficking as
4 provided in section 712-1240.6, or involving possession or use
5 of drug paraphernalia under section 329-43.5. If the defendant
6 fails to complete the substance abuse treatment program or the
7 court determines that the defendant cannot benefit from any
8 other suitable substance abuse treatment program, the defendant
9 shall be subject to revocation of probation and incarceration.

10 The court may require the defendant to:

11 (a) Be assessed by a certified substance abuse counselor
12 for substance abuse dependency or abuse under the
13 applicable Diagnostic and Statistical Manual and
14 Addiction Severity Index;

15 (b) Present 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;



- 1 (c) Contribute to the cost of the substance abuse
2 treatment program; and
3 (d) Comply with any other terms and conditions of
4 probation.

5 As used in this subsection, "substance abuse treatment
6 program" means drug or substance abuse treatment services
7 provided outside a correctional facility by a public, private,
8 or nonprofit entity that specializes in treating persons who are
9 diagnosed with substance abuse or dependency and preferably
10 employs licensed professionals or certified substance abuse
11 counselors.

12 Nothing in this subsection shall be construed to give rise
13 to a cause of action against the State, a state employee, or a
14 treatment provider."

15 SECTION 3. This Act does not affect rights and duties that
16 matured, penalties that were incurred, and proceedings that were
17 begun before its effective date.

18 SECTION 4. Statutory material to be repealed is bracketed
19 and stricken. New statutory material is underscored.




H.B. NO. 1295

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

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INTRODUCED BY: _____

 DR

JAN 27 2021



H.B. NO. 1295

Report Title:

Probation; Sexual Assault; Minors; Defendants

Description:

Requires a court to revoke probation if the probationer has failed to strictly comply with any condition of the order, if the offense for which the probationer was sentenced was a sexual assault offense and the victim of the offense was a minor under the age of 18 when the offense was committed.

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