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# A BILL FOR AN ACT

RELATING TO PROBATION.

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

1       SECTION 1. The legislature finds that existing state laws  
2 relating to certain violations of community supervision are  
3 resulting in unnecessary, counterproductive, skyrocketing rates  
4 of incarceration and severe overcrowding in local jails and  
5 prisons. Based on Creating Better Outcomes, Safer Communities,  
6 Final Report of the House Concurrent Resolution 85 Task Force on  
7 Prison Reform to the Hawai'i Legislature, which was submitted  
8 before the regular session of 2019, the incarcerated population  
9 is increasing at a much faster rate than the State's general  
10 population. From 1978 to 2016, the State's overall population  
11 increased by fifty-three per cent, while the State's combined  
12 jail and prison population increased by six hundred seventy per  
13 cent. In 2018, more than twenty-eight thousand Hawaii residents  
14 were incarcerated or under some form of probation, parole, or  
15 other form of community supervision. According to States of  
16 Incarceration: The Global Context 2021, a report of the Prison  
17 Policy Initiative, Hawaii has four hundred thirty-nine



1 incarcerated persons for every one hundred thousand overall  
2 persons, or an incarcerated population of 0.439 per cent of the  
3 overall population, which is higher than in the Philippines  
4 (0.200 per cent), South Africa (0.248 per cent), Vermont (0.288  
5 per cent), Russia (0.329 per cent), Turkey (0.332 per cent), and  
6 New York (0.376 per cent).

7 The legislature also finds that based on weekly population  
8 reports, typically one-fourth of all jail and prison admissions  
9 in Hawaii are the result of probation or parole technical  
10 violations, which are violations of the terms of legal  
11 supervision, other than the commission of certain crimes. The  
12 legislature further finds that the foregoing practices have  
13 unequal impacts. Native Hawaiians, Pacific Islanders, Black  
14 people, and poor people are disproportionately overrepresented  
15 at every stage of the criminal justice system, including the  
16 overcrowded jails and prisons. Research shows that  
17 incarceration interferes with employment, housing, health care,  
18 child custody, and other life opportunities and results in  
19 negative impacts to families and communities.

20 The legislature also finds that incarceration for technical  
21 violations of probation is expensive. The State currently



1 spends \$219 per day, or \$79,935 per year, to incarcerate just  
2 one person. Research shows that, in contrast, community-based  
3 services are a fraction of the cost of incarceration. Research  
4 also shows that investment in access to employment; housing;  
5 social services; and voluntary, community-based substance use  
6 treatment, mental health, and re-entry programs reduce  
7 recidivism more effectively than incarceration.

8 The purpose of this Act is to reform probation procedures  
9 by:

10 (1) Creating a good time credit system, by which a  
11 defendant on probation may reduce the defendant's  
12 sentence through compliance with conditions of  
13 probation;

14 (2) Requiring a probation officer to:

15 (A) Conduct a formal review of a defendant's progress  
16 halfway through the defendant's period of  
17 probation;

18 (B) Submit a report after the formal review of the  
19 defendant to the presiding or sentencing judge  
20 justifying why the defendant needs supervision on  
21 probation; and



1 (C) Provide the defendant information on how to file  
2 a motion with the court for early termination of  
3 probation, if the defendant so chooses; provided  
4 that the defendant was not convicted of an  
5 offense under chapter 134, chapter 707, section  
6 586-4, section 586-11, or section 709-906, Hawaii  
7 Revised Statutes; and

8 (3) Giving a probation or law enforcement officer who has  
9 probable cause to believe a defendant has failed to  
10 comply with a requirement imposed as a condition of  
11 the probation, if the failure to comply was a  
12 technical violation, the discretion to issue the  
13 defendant a written notice of a court hearing that  
14 states the defendant's alleged violation and the date,  
15 time, location, and purpose of the hearing; and

16 (4) Prohibiting the issuance of a bench warrant and arrest  
17 for certain technical violations.

18 SECTION 2. Chapter 706, Hawaii Revised Statutes, is  
19 amended by adding a new section to part II to be appropriately  
20 designated and to read as follows:



1        "§706-        Good time credit system.        (1) Notwithstanding  
2 any law to the contrary, there shall be a good time credit  
3 system through which a defendant may earn credit for compliance  
4 with the conditions of a sentence of probation.

5        (2) A defendant shall earn a credit that is worth a  
6 reduction of thirty days from the defendant's sentence for every  
7 thirty days the defendant is in compliance with the conditions  
8 of a sentence of probation.

9        (3) Credits may be forfeited, but only for failure to  
10 comply with a condition of a sentence of probation, and only in  
11 proportion to the severity of the defendant's failure to comply  
12 with the condition.

13        (4) Credits earned under this section shall be earned in  
14 addition to any other credits for a criminal sentence that may  
15 be earned under applicable law."

16        SECTION 3. Section 706-625, Hawaii Revised Statutes, is  
17 amended to read as follows:

18        **"§706-625 Revocation, modification of probation**  
19 **conditions. (1) The court, on application of a probation**  
20 **officer, the prosecuting attorney, the defendant, or on its own**  
21 **motion, after a hearing, may revoke probation except as provided**



1 in subsection [~~(7)~~,] (6), 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) The court may modify the requirements imposed on the  
2 defendant or impose further requirements, if it finds that such  
3 action will assist the defendant in leading a law-abiding life.

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

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

9           ~~+(7)]~~ (6) The court may require a defendant to undergo and  
10 complete a substance abuse treatment program when the defendant  
11 has committed a violation of the terms and conditions of  
12 probation involving possession or use, not including to  
13 distribute or manufacture as defined in section 712-1240, of any  
14 dangerous drug, detrimental drug, harmful drug, intoxicating  
15 compound, marijuana, or marijuana concentrate, as defined in  
16 section 712-1240[7]; unlawful methamphetamine trafficking as  
17 provided in section 712-1240.6[7] as that section was in effect  
18 before June 22, 2006; methamphetamine trafficking as provided in  
19 section 712-1240.7; or involving possession or use of drug  
20 paraphernalia under section 329-43.5. If the defendant fails to  
21 complete the substance abuse treatment program or the court



1 determines that the defendant cannot benefit from any other  
2 suitable substance abuse treatment program, the defendant shall  
3 be subject to revocation of probation and incarceration. The  
4 court may require the defendant to:

5 (a) Be assessed by a certified substance abuse counselor  
6 for substance abuse dependency or abuse under the  
7 applicable Diagnostic and Statistical Manual and  
8 Addiction Severity Index;

9 (b) Present a proposal to receive substance abuse  
10 treatment in accordance with the treatment plan  
11 prepared by a certified substance abuse counselor  
12 through a substance abuse treatment program that  
13 includes an identified source of payment for the  
14 treatment program;

15 (c) Contribute to the cost of the substance abuse  
16 treatment program; and

17 (d) Comply with any other terms and conditions of  
18 probation.

19 ~~[As used in this subsection, "substance abuse treatment~~  
20 ~~program" means drug or substance abuse treatment services~~  
21 ~~provided outside a correctional facility by a public, private,~~



~~or nonprofit entity that specializes in treating persons who are  
diagnosed with substance abuse or dependency and preferably  
employs licensed professionals or certified substance abuse  
counselors.]~~

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

(7) Halfway through the defendant's period of probation,  
the probation officer shall conduct a formal review of the  
defendant's progress and shall:

(a) Submit a report to the presiding or sentencing judge  
justifying why the defendant continues to need  
supervision on probation; and

(b) Provide the defendant information on how to file a  
motion with the court for early termination of  
probation, if the defendant so chooses;

provided that review and early termination shall not be  
conducted if the defendant was convicted of an offense under  
chapter 134, chapter 707, section 586-4, section 586-11, or  
section 709-906.

(8) As used in this section:



1       "Convicted" means that a judgment has been pronounced upon  
2 the verdict.

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

9       SECTION 4. Section 706-626, Hawaii Revised Statutes, is  
10 amended to read as follows:

11       **"§706-626 Summons or arrest of defendant on probation;**  
12 **commitment without bail. At any time before the discharge of**  
13 **the defendant or the termination of the period of probation:**

- 14       (1) The court may, in connection with the probation,  
15       summon the defendant to appear before it or may issue  
16       a warrant for the defendant's arrest; provided that  
17       the court shall not issue a warrant for the  
18       defendant's arrest if the defendant failed to comply  
19       with a requirement imposed as a condition of the order  
20       if the failure to comply was a technical violation;



1        (2) A probation or law enforcement officer, having  
2        probable cause to believe that the defendant has  
3        failed to comply with a requirement imposed as a  
4        condition of the order, may, if the failure to comply  
5        was a technical violation, issue the defendant a  
6        written notice of a court hearing that states the  
7        defendant's alleged violation and the date, time,  
8        location, and purpose of the hearing;

9        ~~[-2-]~~ (3) A probation or law enforcement officer, having  
10       probable cause to believe that the defendant has  
11       failed to comply with a requirement imposed as a  
12       condition of the order, may, if the failure to comply  
13       was not a technical violation, arrest the defendant  
14       without a warrant, and the defendant shall be held in  
15       custody pending the posting of bail pursuant to a bail  
16       schedule established by the court, or until a hearing  
17       date is set; provided that when the punishment for the  
18       original offense does not exceed one year, the  
19       probation or law enforcement officer may admit the  
20       probationer to bail; or



1        [~~(3)~~] (4)    The court, if there is probable cause to believe  
2                    that the defendant has committed another crime or has  
3                    been held to answer therefor, may commit the defendant  
4                    without bail, pending a determination of the charge by  
5                    the court having jurisdiction thereof.

6        As used in this section, "technical violation" means any  
7        conduct that violates a condition of community supervision,  
8        other than the commitment of a new misdemeanor offense under  
9        chapter 134, chapter 707, or section 709-906, or a new felony  
10       offense."

11       SECTION 5.    This Act does not affect rights and duties that  
12       matured, penalties that were incurred, and proceedings that were  
13       begun before its effective date.

14       SECTION 6.    Statutory material to be repealed is bracketed  
15       and stricken.    New statutory material is underscored.

16       SECTION 7.    This Act shall take effect on July 1, 3000.



**Report Title:**

Probation; Review; Early Termination; Violation; Judiciary

**Description:**

Creates a good time credit system, by which criminal a defendant on probation may reduce their time on probation through compliance with conditions of probation. Requires probation officers to conduct formal reviews of a defendant's progress halfway through the defendant's period of probation, submit a report after the formal review of the defendant to the presiding or sentencing judge justifying why the defendant continues to need supervision on probation, and provide information on how to file a motion for early termination of probation; provided that the defendant was not convicted of an offense under chapter 134, chapter 707, section 586-4, section 586-11, and section 709-906, Hawaii Revised Statutes. Gives probation or law enforcement officers who have probable cause to believe a defendant has failed to comply with a condition of probation, if the failure to comply was a technical violation, the discretion to issue the defendant a written notice of a court hearing. Prohibits the issuance of a bench warrant and arrest for certain technical violations. Defines technical violation. Effective 7/1/3000. (SD1)

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

