

JAN 19 2023

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, at the end of the
2 2021 fiscal year, the judiciary's adult client services branch
3 was overseeing approximately eighteen thousand five hundred
4 offenders, all of whom were placed on probation or subject to
5 court-ordered control, including offenders released from the
6 Hawaii state hospital. Of these, national studies indicate that
7 between eleven to fourteen thousand offenders were likely using
8 substances during the commission of their offense, committed the
9 offense to support an addiction, or were charged with a
10 substance-related crime. A growing body of research suggests
11 that more than sixty per cent of persons who are arrested for a
12 felony offense, including both drug-related and non-drug-related
13 crimes, test positive for recent drug use at the time of
14 booking.

15 The legislature further finds that, without proper
16 supervision and treatment, an offender may fail probation and
17 commit new offenses. This causes further injury to victims,



1 greater loss of property, and greater expenditure of the State's
2 limited resources to identify, apprehend, prosecute, and return
3 the offender to confinement. Persons charged with repeat
4 offenses pose a substantially greater risk of criminal
5 recidivism.

6 The legislature notes that in 2004, Hawaii was the first
7 state in the nation to develop a high-intensity, collaborative
8 probation strategy to effect behavioral change in higher-risk,
9 higher-need felony probationers. The key to the Hawaii
10 opportunity probation with enforcement program is that it offers
11 immediate consequences for probation violations. This allows
12 the probationer to learn by pairing a bad choice (a probation
13 violation) with a consequence (a consistent and proportionate
14 jail sanction). The program is parenting 101. Hawaii
15 opportunity probation with enforcement hearings typically deal
16 with a single recent violation, rather than allowing the
17 violations to accumulate without consequences, as often occurs
18 with regular probation.

19 The legislature recognizes that, after starting in 2004
20 with a small group of thirty-four probationers, all sex
21 offenders or offenders with significant substance use issues,



1 the program quickly grew to more than one thousand five hundred
2 participants by 2007. The program expanded without requiring
3 additional courtrooms, judges, court clerks, probation offers,
4 police officers, or jail cells. The funds appropriated by the
5 legislature went almost entirety toward expanding the program's
6 capacity for drug testing and treatment. By 2016, the program
7 had expanded to include more than two thousand participants.

8 The legislature notes that, since 2007, the Hawaii
9 opportunity probation with enforcement program has been the
10 focus of numerous top-quality studies and has been adopted by
11 courts across the nation. One study conducted in 2007 by
12 researchers from Pepperdine university and the university of
13 California, Los Angeles, found that probationers who
14 participated in the program were fifty-five per cent less likely
15 to be arrested for a new crime. They were also seventy-two per
16 cent less likely to use drugs, sixty-one per cent less likely to
17 miss appointments with their supervisory officers, and
18 fifty-three per cent less likely to have their probation
19 revoked. As a result, these probationers served an average of
20 forty-eight per cent fewer days in incarceration than the
21 control group. Notably, the study found that while probationers



1 in the program and those on regular probation served
2 approximately the same number of days in jail, probationers in
3 the program spent half as many days in prison for revocations or
4 new convictions. Additionally, women in the program failed at
5 probation and went to prison fifty per cent less often than
6 women on regular probation. Similarly, native Hawaiians in the
7 program were forty-two per cent less likely to have their
8 probation revoked and to be sent to prison when compared to
9 native Hawaiians on regular probation. Hawaii opportunity
10 probation with enforcement participants were also more likely
11 than other prisoners to receive early termination of probation
12 for successful compliance with all terms and conditions of their
13 probation.

14 The legislature finds that the State has had substantial
15 success with this program, in terms of less crimes committed,
16 less need for long-term incarceration, and increased
17 productivity, self-esteem, and overall well-being for program
18 participants. The program is also cost-effective, since a
19 single dedicated judge can supervise more than two thousand
20 felony probationers. Given these successes, the legislature



1 believes that this program should be implemented on a broader
2 scale, in a format that has already proven effective.

3 Accordingly, the purpose of this Act is to implement the
4 Hawaii opportunity probation with enforcement program statewide.
5 The goal of the program is to reduce crime, recidivism, and mass
6 incarceration while supporting probationers' desire to be
7 contributing, law-abiding citizens, through a combined system of
8 accountability and treatment options.

9 SECTION 2. (a) There is established the Hawaii
10 opportunity probation with enforcement program to help
11 participants comply with conditions of supervision, succeed on
12 probation or deferral, and avoid going to prison. The program
13 shall follow the Hawaii opportunity probation with enforcement
14 model, as developed and implemented in the city and county of
15 Honolulu from 2004 through 2019. The program shall be
16 administered by the judiciary, in consultation with the office
17 of the public defender and the prosecuting attorneys for the
18 counties of Hawaii, Maui, Kauai, and the city and county of
19 Honolulu.



1 (b) The purpose of the program shall be to reduce
2 recidivism by having the court, attorneys, and probation
3 officers work together closely to:

4 (1) Hold participants immediately accountable for
5 probation or deferral violations;

6 (2) Provide swift, certain, consistent, and proportionate
7 jail sanctions for probation or deferral violations;

8 (3) Provide support and accountability by offering:

9 (A) Probation officers trained in evidence-based
10 practices;

11 (B) A judge knowledgeable about addiction who will
12 encourage the participants but also be firm and
13 hold participants accountable for their actions;
14 and

15 (C) A swift, certain, consistent, and proportionate
16 sanctions system to help keep participants sober
17 and ensure that participants see their probation
18 officers and treatment providers, if needed;

19 (4) Coordinate with various treatment programs, including
20 sex offender treatment, mental health treatment,



1 substance abuse, treatment, and domestic violence
2 intervention;

3 (5) Implement randomized drug testing for appropriate
4 participants; and

5 (6) Focus on higher-risk participants to achieve the
6 biggest gains in reducing recidivism.

7 (c) The court shall hold hearings at the circuit court of
8 the applicable circuit, with both a prosecuting attorney and the
9 participant's defense attorney appearing at each hearing. To
10 promote consistency, one primary judge and one backup judge
11 shall be assigned to implement the program in each circuit.

12 (d) Participants shall be admitted to the program at the
13 discretion of the court or their assigned probation officer,
14 based upon a determination by the court or assigned probation
15 officer that the participant is likely to benefit from the
16 program.

17 (e) After admission to the program, each participant shall
18 attend a Hawaii opportunity probation with enforcement warning
19 hearing with the judge, who shall inform the participant of the:

20 (1) Overall goals and expectations of the program,
21 including the fact that the court, probation officer,



1 prosecuting attorney, and defense attorney are working
2 together to help the participant succeed on probation
3 or deferral;

4 (2) Terms and conditions of probation or deferral that, if
5 violated, will subject the participant to jail
6 sanctions;

7 (3) Swift, certain, consistent, and proportionate jail
8 sanctions to be imposed in the event that that
9 participant violates the terms and conditions of
10 probation or deferral;

11 (4) Ability of the judge to terminate the participant's
12 probation early upon a finding that the participant
13 has been in compliance with probation conditions for
14 at least two years;

15 (5) Specific rules and expectations relating to randomized
16 drug testing; court appearances; scheduled meetings
17 with the probation officer; treatment participation,
18 as required by the terms or conditions of the
19 participant's probation or deferral; and compliance
20 with all other terms and conditions of the probation
21 or deferral; and



1 (6) The potential that, if conditions are violated,
2 probation could be revoked or the deferral set aside,
3 and the participant re-sentenced to incarceration
4 pursuant to sections 706-625 or 853-3, Hawaii Revised
5 Statutes.

6 (f) The probation officer assigned to a participant shall
7 file a motion to enlarge the conditions of probation or deferral
8 pursuant to section 706-625 or 853-1, Hawaii Revised Statutes,
9 or revoke probation or set aside deferral pursuant to section
10 706-625 or 853-3, Hawaii Revised Statutes, if the participant
11 violates the terms and conditions of probation or deferral by
12 testing positive for drugs, refusing to satisfactorily
13 participate in treatment, failing to meet with their probation
14 officer as scheduled, or violating other terms and conditions.

15 (g) The probation officer assigned to a participant shall
16 conduct randomized drug testing of appropriate participants. If
17 a positive drug test occurs and the participant admits to using
18 drugs, the probation officer shall:

- 19 (1) Immediately take the participant into custody;
- 20 (2) File a motion to enlarge the conditions of probation
- 21 or deferral pursuant to section 706-625 or 853-1,



1 Hawaii Revised Statutes, or revoke probation or set
2 aside deferral pursuant to section 706-625 or 853-3,
3 Hawaii Revised Statutes; and

4 (3) Schedule a court hearing to be held two business days
5 after the positive drug test result.

6 (h) At any hearing on a motion to enlarge the conditions
7 of probation or deferral, revoke probation, or set aside
8 deferral, the participant shall be represented by a defense
9 attorney, and shall have the right to contest the alleged
10 violation pursuant to section 706-625, Hawaii Revised Statutes.
11 The standard of proof for any contested hearing shall be a
12 preponderance of the evidence.

13 (i) If the court finds that enlargement of the conditions
14 of probation or deferral is warranted, the court shall enlarge
15 the participant's sentence as follows:

16 (1) For failing to appear for an appointment or drug test
17 as scheduled but appearing within twenty-four hours of
18 the missed appointment or drug test, and testing
19 negative, no more than seven hours of confinement in
20 the courthouse cellblock;



- 1 (2) For a positive drug test result, following which the
2 participant admits drug use, two days of jail;
- 3 (3) For a positive drug test result, following which the
4 participant denies drug use, and the positive result
5 is confirmed by a laboratory, fifteen days of jail;
- 6 (4) For failure to provide a sufficient urine sample for
7 drug testing as directed, fifteen days of jail;
- 8 (5) For tampering with the drug testing procedure,
9 including but not limited to providing diluted
10 samples, using urine adulterants, or swapping or
11 otherwise providing altered samples, thirty days of
12 jail;
- 13 (6) For failure to appear for an appointment or drug test
14 as scheduled, following which the participant does not
15 appear within five or more days after the missed
16 appointment or drug test, thirty days of jail; and
- 17 (7) For conviction of a new crime, failure to attend or
18 complete treatment, or other violations of the terms
19 and conditions of probation or deferral not otherwise
20 specified, either a period of jail to be determined by



1 the court, or revocation of probation or setting aside
2 of the deferral.

3 (j) For purposes of this Act:

4 "Defense attorney" means any attorney retained, appointed,
5 or ordered to represent the participant, including the public
6 defender or any deputy public defender.

7 "Deferral" means deferred acceptance of guilty or nolo
8 contendere plea pursuant to section 853-1, Hawaii Revised
9 Statutes.

10 "Jail" means any type of detention administered by the
11 department of public safety, or its successor agency.

12 "Participant" means a defendant who has either been
13 convicted of a felony offense or placed on deferral and who has
14 been accepted for placement in the Hawaii opportunity probation
15 with enforcement program.

16 "Prosecuting attorney" means the prosecuting attorney or
17 any deputy prosecuting attorney for the applicable county.



1 SECTION 3. This Act shall take effect upon its approval.

2

INTRODUCED BY: *Paul N. M.*
By Request



S.B. NO. 223

Report Title:

Honolulu Prosecuting Attorney Package; Hawaii Opportunity Probation With Enforcement Program; Judiciary

Description:

Establishes the Hawaii Opportunity Probation with Enforcement Program to be administered by the Judiciary.

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

