

ACT 127

H.B. NO. 152

A Bill for an Act Relating to the Judiciary.

Be It Enacted by the Legislature of the State of Hawaii:

SECTION 1. The legislature finds that the expedited sentencing program (program) was enacted as a pilot project in 1993 by Act 316, Session Laws of Hawaii 1993. The program focuses on the needs of the child victim in intra-familial child sex abuse cases, while providing safeguards for the community, and reducing court and prison-related expenses. The program minimizes the possibility of revictimizing the child victim by:

- (1) Allowing the child to remain in the family home instead of removing the child to foster care as the offender is required to leave or remain away from the family home;
- (2) Eliminating the need for the child to testify in family court;
- (3) Requiring that the offender plead guilty; and
- (4) Requiring treatment and supervision for all members of the child's family to ensure protection of the child and the community.

Program benefits to the community include the potential fiscal savings associated with reduction of trials and prison time because the offender must plead guilty to all of the charges. To qualify for the program, an offender assessment must determine that the offender is "safe to probate." If it is deemed that the offender is "safe to probate," the offender must agree to comply with all of the conditions of the program. The offender then serves up to one year in prison before being placed on probation for either ten or twenty years, depending on the severity of the offense. The offender must also immediately participate in court-approved sex offender treatment until clinically discharged. Treatment is paid for by the offender unless it is determined that the offender is not financially capable. If the offender violates the probation terms, the offender serves a full ten- or twenty-year prison term.

The legislature further finds that the program has been in operation for seven years. The counties implementing the program have encountered no substantive problems. The legislature recognizes, however, that the continued success of the program depends on the availability of resources for probation services and offender assessment and treatment.

The purpose of this Act is to remove the program's "pilot project" status by extending the sunset date by five years, repealing the annual reporting requirement, and preventing the inadvertent repeal of probation laws established in connection with the expedited sentencing program.

SECTION 2. Section 706-606.3, Hawaii Revised Statutes, is amended to read as follows:

“~~[[§706-606.3]] Expedited sentencing program.~~ (1) A person who has committed intra-family sexual assault may be considered for the expedited sentencing program in accordance with this section. As used in this section, "intra-family" sexual assault means any criminal offense of felony sexual assault under section 707-730, 707-731, or 707-732, or ~~[of]~~ incest, as defined in section 707-741, in which the victim of the offense is related to the ~~[alleged-offender]~~ defendant by consan-

guinity or marriage, or ~~[residing]~~ resides in the same dwelling unit as the ~~[alleged offender]~~ defendant, and the victim was, at the time of the sexual assault, under the age of eighteen.

(2) The police department of the county in which the sexual assault took place or any other appropriate investigative law enforcement agency shall confer with the appropriate prosecuting authority. If the prosecuting authority determines that it ~~[would be]~~ is appropriate to provide notice of the expedited sentencing program to the ~~[alleged offender,]~~ defendant, the police department or other appropriate investigative law enforcement agency shall give ~~[an alleged offender]~~ the defendant written notice of the existence of the expedited sentencing program provided in this section. The ~~[providing of the notice]~~ notice provision shall not be a prerequisite to ~~[the taking of a statement from an alleged offender, nor in any manner]~~ questioning the defendant. The notice provision shall ~~[it commit a]~~ not obligate the prosecuting authority to ~~[issuing]~~ issue a statement of ~~[no objection to the alleged offender being considered]~~ “no objection” when considering the defendant for the expedited sentencing program.

(3) The written notice shall state:

“YOU ARE ADVISED TO SEEK LEGAL COUNSEL IMMEDIATELY [AND,] IF YOU CANNOT AFFORD [ONE, TO] PRIVATE COUNSEL, CONTACT THE OFFICE OF THE PUBLIC DEFENDER. FAILURE TO CONTACT AN ATTORNEY MAY [KEEP YOU OUT OF] DISQUALIFY YOU FROM THIS PROGRAM. A copy of section 706-606.3, Hawaii Revised Statutes, is attached to this notice. You are under investigation for a felony sexual assault against a minor. Upon completion of this investigation, if there is sufficient basis to believe that you have committed a sexual assault, the case will be referred to the appropriate prosecuting authority for review and possible institution of criminal charges. Hawaii law provides for a range of ordinary prison sentences for felony sexual assault ranging from five years up to twenty years ~~[imprisonment]~~, or ~~[even]~~ life imprisonment, depending upon the offense. However, section 706-606.3, Hawaii Revised Statutes, provides that a person who commits a sexual assault upon a minor but who admits guilt, cooperates with the prosecuting authority, and participates in appropriate assessment and treatment may be considered for the expedited sentencing program. A person who is sentenced in accordance with the expedited sentencing program may be sentenced to a term of probation~~;~~ which may be revoked. Probation may be revoked, however, for failure to comply with the terms of the probation pursuant to section 706-625. To qualify for consideration for the expedited sentencing program, your legal counsel first must request from the office of the prosecuting authority named in this notice a written statement as to whether that office has any objection to your being considered for the expedited sentencing program. THE COURT WILL NOT CONSIDER YOU FOR THE EXPEDITED SENTENCING PROGRAM UNDER SECTION 706-606.3, HAWAII REVISED STATUTES, UNLESS YOUR LEGAL COUNSEL HAS RECEIVED A WRITTEN STATEMENT THAT THE APPROPRIATE PROSECUTING AUTHORITY HAS NO OBJECTION TO YOUR BEING CONSIDERED FOR THE EXPEDITED SENTENCING PROGRAM AND THE REQUEST FOR THAT WRITTEN STATEMENT WAS MADE WITHIN FOURTEEN DAYS OF YOUR RECEIPT OF THIS NOTICE. FURTHER, THE COURT WILL NOT CONSIDER YOU FOR THE EXPEDITED SENTENCING PROGRAM UNDER SECTION 706-606.3, HAWAII REVISED STATUTES, UNLESS, [AFTER] ONCE YOUR LEGAL COUNSEL HAS RECEIVED THIS NOTICE, YOU HAVE MADE A GOOD FAITH EFFORT TO AVOID THE NECESSITY [FOR] OF THE CHILD

BEING REMOVED FROM THE FAMILY HOME, INCLUDING BUT NOT LIMITED TO MOVING AND REMAINING OUT OF THE FAMILY HOME UNTIL OTHERWISE ORDERED BY THE COURT.”

The written notice also shall provide:

- (a) Instructions on how to contact the appropriate prosecuting authority, including any necessary addresses and ~~[phone]~~ telephone numbers; and
- (b) The name of the person delivering the notice and the date it was given to the alleged offender.
- (4) A defendant shall not be considered by the court for the expedited sentencing program under this section unless the defendant’s legal counsel ~~[requested,]~~ requests within fourteen days of the defendant’s receipt of the written notice, that the defendant be considered for the expedited sentencing program, and defendant’s counsel subsequently ~~[received]~~ receives a written statement from the appropriate prosecuting authority stating that ~~[office-has]~~ it has no objection to the defendant being considered for the expedited sentencing program in accordance with this section ~~[and further, that it is established that].~~ Additionally, each of the following criteria ~~[has-been]~~ shall be met:

- (a) After receiving the required written notice, the defendant ~~[has]~~ made a good faith effort to avoid the necessity ~~[for]~~ of the child being removed from the family home, including but not limited to moving and remaining out of the family home until otherwise ordered by the court;
- (b) The victim of the sexual assault was under the age of eighteen ~~[at the time of the commission of]~~ when the sexual assault~~;~~ was committed;
- (c) The defendant ~~[has not received a prior sentence]~~ was never previously sentenced under this section and has ~~[not received a prior conviction for]~~ never been convicted of felony sexual assault under section 707-730, 707-731, or 707-732, or ~~[of]~~ incest ~~[, as defined in]~~ under section 707-741;
- (d) A guardian ad litem appointed in a family court proceeding, or a person assigned by the Children’s Advocacy Center to ~~[perform the function of a]~~ serve as guardian ad litem ~~[has agreed,]~~ agreed that it would be in the best interest of the child for the ~~[alleged-offender]~~ defendant to be considered for the expedited sentencing program. ~~[The]~~ No prosecuting authority shall ~~[not]~~ issue a statement of no objection without this prior agreement; and
- (e) The defendant has complied with the requirements for consideration for the expedited sentencing program as established in subsection (6); provided that at sentencing the prosecuting authority may oppose ~~[at sentencing]~~ the defendant’s participation in the expedited sentencing program~~;~~ if the prosecuting authority determines that the defendant has failed to satisfy the criteria under subsection (6).

(5) The prosecuting authority and the child’s guardian ad litem ~~[or a person assigned to perform the function of a guardian ad litem]~~ may consult with any other appropriate agency or individual to assist in a decision whether to provide a written statement of ~~[no objection]~~ “no objection” prior to the defendant being considered for sentencing under the expedited sentencing program.

(6) Within seven business days of receipt of the written notice stating that the appropriate prosecuting authority has no objection to the ~~[alleged-offender]~~ defendant being considered for the expedited sentencing program in accordance with this section, unless the prosecuting authority waives compliance with the time limit, the ~~[alleged-offender]~~ defendant shall ~~[comply with each of the following requirements]:~~

- (a) Continue to make a good faith effort to avoid the necessity ~~[for]~~ of the child being removed from the family home, including but not limited to

moving and remaining out of the family home until otherwise ordered by the court;

- (b) Admit to commission of the sexual assault to the police department of the county in which the assault took place or other appropriate investigative law enforcement agency;
- (c) Provide to the appropriate prosecuting authority a written waiver of indictment and preliminary hearing for any criminal charges arising from the sexual assault; and
- (d) Enter a voluntary plea of guilty to the charge or charges alleged upon or following arraignment.

(7) Notwithstanding sections 706-606.5, 706-620, 706-659, 706-660, and 706-660.2, a defendant ~~[who may be]~~ considered for the expedited sentencing program ~~[in accordance with]~~ under this section ~~[as of the date]~~ when sentence is imposed may be sentenced to a term of probation ~~[upon the conditions specified in]~~ pursuant to section 706-624; provided that~~[-]~~ if the defendant is sentenced to a term of imprisonment~~[which may be up to one year,]~~ as a condition of probation, the term of imprisonment may allow for the defendant's retention of employment.

(8) The term of probation under this section shall be as follows:

- (a) For an offense under section 707-730 or 707-731, twenty years; and
- (b) For an offense under section 707-732 or 707-741, ten years.

(9) In addition to the conditions of probation provided under section 706-624, a sentence under this section shall include that the defendant ~~[eomply with the following conditions:]~~ shall:

- (a) ~~[To participate]~~ Participate in court approved, appropriate sex offender assessment and treatment~~[-]~~ that ~~[must]~~ shall conform to the guidelines developed by the adult probation division of the appropriate circuit court, until clinically discharged; provided that ~~[the]~~:

- (i) The prosecuting authority shall be provided notice and the opportunity for a hearing prior to any authorization for treatment discontinuance ~~[being allowed]~~ by the court or the adult probation division; ~~[provided further that the]~~

- (ii) The defendant shall pay for the cost of the assessment and treatment to the extent that the defendant has the ability to do so; and ~~[provided further that a]~~

- (iii) A lack of assessment and treatment resources shall result in the defendant not being considered for the expedited sentencing program;

- (b) ~~[To provide]~~ Provide a written waiver of confidentiality for any assessment, treatment, counseling, therapy, or other program ordered as a condition of probation;

- (c) ~~[To comply]~~ Comply with all orders entered in a proceeding pursuant to chapter 587; and

- (d) ~~[Any]~~ Comply with other condition deemed by the court to be reasonably necessary for the protection of the victim of the sexual assault or the rehabilitation of the defendant.

(10) There shall be a rebuttable presumption in favor of the court imposing a sentence in accordance with this section ~~[on a person who is provided a]~~ when a defendant qualifies for the expedited sentencing program, and written notice of ~~[no objection]~~ "no objection" is issued by the prosecuting authority ~~[and who qualifies for the expedited sentencing program]~~. The court shall provide written findings of fact setting forth specific reasons ~~[that justified]~~ justifying imposition of a sentence ~~[which]~~ that is not in accordance with this section.

~~[(11) The prosecuting authority shall record each request received pursuant to this section and shall report the requests and the action taken to the Children's~~

ACT 127

~~Advocacy Center in each county. The Children's Advocacy Center Interagency Advisory Committee in each county shall monitor the expedited sentencing program. The county committees also shall identify problems relating to the expedited sentencing program within the civil and criminal legal processes and propose solutions. The state director of the Children's Advocacy Center shall compile the information from each county committee and submit a report to the appropriate legislative committees on or before January 15 of each year.]'~~

SECTION 3. Act 316, Session Laws of Hawaii 1993, as amended by Act 157, Session Laws of Hawaii 1995, is amended by amending section 6 to read as follows:

~~"SECTION 6. This Act shall take effect upon its approval [and shall be repealed on June 30, 2001]."~~

SECTION 4. There is appropriated out of the general revenues of the State of Hawaii the sum of \$100,000 or so much thereof as may be necessary for fiscal year 2001-2002 and the sum of \$100,000 or so much thereof as may be necessary for fiscal year 2002-2003 to support domestic violence programs.

The sums appropriated shall be expended by the judiciary for the purpose of this Act.

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

SECTION 6. This Act shall take effect upon its approval; provided that section 4 shall take effect on July 1, 2001.

(Approved May 22, 2001.)