

JAN 19 2018

A BILL FOR AN ACT

RELATING TO PROGRAMS FOR CRIMINAL OFFENDERS.

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

1 SECTION 1. The legislature finds that mental impairments,
2 including substance addiction and psychiatric disorders, are a
3 major cause of chronic homelessness and the habitual commission
4 of crimes. The impaired mental state of offenders often
5 interferes with their ability to make rational decisions, and
6 many resist services such as psychiatric care, drug abuse
7 treatment, offers of shelter, and other assistance that could
8 improve their lives and lessen their propensity to commit
9 crimes.

10 The United States Supreme Court held that unless someone is
11 convicted of a crime, or is adjudicated to be an imminent danger
12 to themselves or others, compelling that person to undergo
13 psychiatric treatment, drug abuse counseling, or other forms of
14 assistance is unconstitutional. This creates vexing problems
15 when impaired persons exercise their constitutional right to
16 refuse services, but find it difficult to live as they choose
17 without continually committing crimes that destroy the quality



1 of life for others. Moreover, under the current penal code,
2 impaired offenders who accept services and overcome addiction or
3 mental illness find that their extensive criminal records serve
4 as a barrier to employment and housing.

5 The legislature further finds that the Hawaii's opportunity
6 probation with enforcement program, commonly known as H.O.P.E.,
7 has been successful in helping offenders avoid committing
8 further crimes. Under H.O.P.E., courts closely supervise
9 probationers and may require them to perform community services;
10 enroll in job training; undergo psychiatric or substance abuse
11 treatment; and refrain from certain activities or avoid certain
12 places. H.O.P.E. also provides "swift and sure" punishment for
13 violating probation rules, followed by multiple opportunities
14 for redemption. Consequently, the program has reduced the
15 recidivism rates of habitual felons by about sixty-five per
16 cent.

17 The purpose of this Act is to:

18 (1) Codify the option of the courts to sentence offenders,
19 including misdemeanants, to probation under H.O.P.E.
20 or other programs that offer an alternative to
21 standard probation or incarceration;



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- 1 (2) Enable impaired offenders to convert the remainder of
2 their existing sentences to H.O.P.E. probation or
3 participation in other programs that provide an
4 alternative to incarceration;
- 5 (3) Enable courts to seal the records of impaired
6 offenders who successfully complete their term of
7 H.O.P.E.;
- 8 (4) Enable impaired offenders who have completed their
9 sentences to have their records sealed in a civil
10 action, in return for successfully completing a course
11 of treatment and rehabilitative endeavors to be
12 determined by the court; and
- 13 (5) Require the unsealing of a previously sealed record if
14 that offender is later convicted of a subsequent
15 offense.

16 This Act shall be known and may be cited as the "Records
17 Sealed for H.O.P.E. Act".

18 SECTION 2. Section 706-605.1, Hawaii Revised Statutes, is
19 amended to read as follows:

20 "**§706-605.1 Intermediate sanctions; eligibility; criteria**
21 **and conditions.** (1) The judiciary shall implement alternative



1 programs that place, control, supervise, and treat selected
2 defendants in lieu of a sentence of incarceration.

3 (2) Defendants may be considered for sentencing to
4 alternative programs if they have not been convicted of a non-
5 probationable class A felony.

6 (3) A defendant may be sentenced by a district, family, or
7 circuit court judge to alternative programs.

8 (4) As used in this section, "alternative programs" means
9 programs ~~[that are created and funded by legislative~~
10 ~~appropriation or federal grant naming the judiciary or one of~~
11 ~~its operating agencies as the expending agency and]~~ that are
12 intended to provide an alternative to incarceration.

13 Alternative programs may include:

14 (a) House arrest, or curfew using electronic monitoring
15 and surveillance, or both;

16 (b) Drug court programs for defendants with assessed
17 alcohol or drug abuse problems, or both;

18 (c) Therapeutic residential and nonresidential programs,
19 including secure drug treatment facilities; ~~[and]~~

20 (d) The Hawaii's opportunity probation with enforcement
21 program and other programs that provide close



1 supervision of probationers, immediate sanctions for
2 violating their terms of probation, and supportive
3 services with opportunities for redemption; and

4 (e) Similar programs created and designated as alternative
5 programs by the legislature or the administrative
6 director of the courts for qualified defendants who do
7 not pose significant risks to the community.

8 (5) Any defendant who:

9 (a) Was impaired by substance addiction, mental illness,
10 homelessness, or other catastrophic affliction at the
11 time of committing any offense;

12 (b) Has not been convicted of a felony; and

13 (c) Is currently incarcerated or serving a term of
14 standard probation,

15 upon demonstration that the defendant is likely to successfully
16 complete one or more alternative programs and will not commit a
17 subsequent offense, may serve the remainder of the defendant's
18 term through alternative programs, upon approval of a court.

19 (6) Any defendant who:



1 (a) Was impaired by substance addiction, mental illness,
2 homelessness, or other catastrophic affliction at the
3 time of committing any offense;

4 (b) Has not been convicted of a felony; and

5 (c) Successfully completes all alternative programs
6 sentenced by a court,

7 may, at a hearing on the motion, or sua sponte, have the
8 defendant's criminal record sealed. Any record sealed pursuant
9 to this subsection shall be unsealed upon conviction by the
10 defendant for a subsequent offense, or by a court for cause."

11 SECTION 3. Section 706-630, Hawaii Revised Statutes, is
12 amended to read as follows:

13 **"§706-630 Discharge of defendant. (1)** Upon the
14 termination of the period of the probation or the earlier
15 discharge of the defendant, the defendant shall be relieved of
16 any obligations imposed by the order of the court and shall have
17 satisfied the disposition of the court, except as to any action
18 under this chapter to collect unpaid fines, restitution,
19 attorney's fees, costs, or interest.

20 (2) Any defendant who:

21 (a) Was previously discharged pursuant to subsection (1);



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(b) Was impaired by substance addiction, mental illness, homelessness, or other catastrophic affliction at the time of committing any offense; and

(c) Has not been convicted of a felony, may initiate a civil action for the purpose of sealing the defendant's criminal record in exchange for successfully completing a course of therapeutic and rehabilitative endeavors to be determined by the court. Any record sealed pursuant to this subsection shall be unsealed upon conviction by the defendant for a subsequent offense, or by a court for cause."

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

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

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Report Title:

Crime; Mental Health; HOPE; H.O.P.E.; Hawaii's Opportunity
Probation with Enforcement; Judiciary

Description:

Codifies the option of the courts to sentence defendants to probation under the H.O.P.E. program. Authorizes current impaired offenders to convert the remainder of their terms to the H.O.P.E. program. Authorizes courts to seal the criminal records of impaired offenders who complete various alternative programs to sentencing. Authorizes impaired offenders who have completed their sentences to have their criminal records sealed in exchange for completing a course of treatment and rehabilitative endeavors. Requires that an impaired offender's sealed criminal record be unsealed upon conviction of a subsequent offense.

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