
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) Requiring a probation officer to conduct a formal
11 review of a defendant's progress halfway through the
12 defendant's period of probation and provide the
13 defendant information on how to file a motion with the
14 court for early termination of probation, if the
15 defendant so chooses; and
- 16 (2) Giving a probation or law enforcement officer who has
17 probable cause to believe a defendant has failed to
18 comply with a discretionary condition of probation the
19 discretion to issue the defendant a written notice of
20 a court hearing that states the defendant's alleged



1 violation and the date, time, location, and purpose of
2 the hearing.

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

5 **"§706-625 Revocation, modification of probation**

6 **conditions.** (1) The court, on application of a probation
7 officer, the prosecuting attorney, the defendant, or on its own
8 motion, after a hearing, may revoke probation except as provided
9 in subsection [~~(7)~~,] (6), reduce or enlarge the conditions of a
10 sentence of probation, pursuant to the provisions applicable to
11 the initial setting of the conditions and the provisions of
12 section 706-627.

13 (2) The prosecuting attorney, the defendant's probation
14 officer, and the defendant shall be notified by the movant in
15 writing of the time, place, and date of any such hearing, and of
16 the grounds upon which action under this section is proposed.
17 The prosecuting attorney, the defendant's probation officer, and
18 the defendant may appear in the hearing to oppose or support the
19 application, and may submit evidence for the court's
20 consideration. The defendant shall have the right to be
21 represented by counsel. For purposes of this section the court



1 shall not be bound by the Hawaii rules of evidence, except for
2 the rules pertaining to privileges.

3 (3) The court shall revoke probation if the defendant has
4 inexcusably failed to comply with a substantial requirement
5 imposed as a condition of the order or has been convicted of a
6 felony. The court may revoke the suspension of sentence or
7 probation if the defendant has been convicted of another crime
8 other than a felony.

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

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

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

17 ~~(7)]~~ (6) 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[7]; unlawful methamphetamine trafficking as
4 provided in section 712-1240.6[7] as that section was in effect
5 before June 22, 2006; methamphetamine trafficking as provided in
6 section 712-1240.7; or involving possession or use of drug
7 paraphernalia under section 329-43.5. If the defendant fails to
8 complete the substance abuse treatment program or the court
9 determines that the defendant cannot benefit from any other
10 suitable substance abuse treatment program, the defendant shall
11 be subject to revocation of probation and incarceration. The
12 court may require the defendant to:

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

17 (b) Present a proposal to receive substance abuse
18 treatment in accordance with the treatment plan
19 prepared by a certified substance abuse counselor
20 through a substance abuse treatment program that



1 includes an identified source of payment for the
2 treatment program;

3 (c) Contribute to the cost of the substance abuse
4 treatment program; and

5 (d) Comply with any other terms and conditions of
6 probation.

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

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

17 (7) Halfway through the defendant's period of probation,
18 the probation officer shall conduct a formal review of the
19 defendant's progress and shall provide the defendant information
20 on how to file a motion with the court for early termination of
21 probation, if the defendant so chooses.



1 (8) As used in this section:

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

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

10 SECTION 3. Section 706-626, Hawaii Revised Statutes, is
11 amended to read as follows:

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

15 (1) The court may, in connection with the probation,
16 summon the defendant to appear before it or may issue
17 a warrant for the defendant's arrest;

18 (2) A probation or law enforcement officer, having
19 probable cause to believe that the defendant has
20 failed to comply with a discretionary condition under
21 section 706-624(2) imposed as a condition of the



1 order, may issue the defendant a written notice of a
2 court hearing that states the defendant's alleged
3 violation and the date, time, location, and purpose of
4 the hearing;

5 ~~[-2-]~~ (3) A probation or law enforcement officer, having
6 probable cause to believe that the defendant has
7 failed to comply with a requirement imposed as a
8 condition of the order, may arrest the defendant
9 without a warrant, and the defendant shall be held in
10 custody pending the posting of bail pursuant to a bail
11 schedule established by the court, or until a hearing
12 date is set; provided that when the punishment for the
13 original offense does not exceed one year, the
14 probation or law enforcement officer may admit the
15 probationer to bail; or

16 ~~[-3-]~~ (4) The court, if there is probable cause to believe
17 that the defendant has committed another crime or has
18 been held to answer therefor, may commit the defendant
19 without bail, pending a determination of the charge by
20 the court having jurisdiction thereof."



1 SECTION 4. This Act does not affect rights and duties that
2 matured, penalties that were incurred, and proceedings that were
3 begun before its effective date.

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

6 SECTION 6. This Act shall take effect on July 1, 3000.
7



Report Title:

Probation; Review; Early Termination; Violation; Judiciary

Description:

Requires probation officers to conduct formal reviews of a defendant's progress halfway through the defendant's period of probation and provide information on how to file a motion for early termination of probation. Gives probation or law enforcement officers who have probable cause to believe a defendant has failed to comply with a discretionary condition of probation the discretion to issue the defendant a written notice of a court hearing. Effective 7/1/3000. (HD2)

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

