

JAN 21 2022

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 current 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 the Final Report of the House Concurrent
6 Resolution No. 85 Task Force on Prison Reform, which was
7 submitted to the legislature before the 2019 regular session,
8 the incarcerated population is increasing at a much faster rate
9 than the State's general population. From 1978 to 2016, the
10 State's overall population increased by fifty-three per cent,
11 while the State's combined jail and prison population increased
12 by six hundred seventy per cent. In 2018, more than twenty-
13 eight thousand Hawaii residents were incarcerated or under some
14 form of probation, parole, or other form of community
15 supervision. According to States of Incarceration: The Global
16 Context 2021, a report of the Prison Policy Initiative, Hawaii
17 has four hundred thirty-nine incarcerated persons for every one



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

6 The legislature also finds that based on weekly population
7 reports, typically one-fourth of all jail and prison admissions
8 in Hawaii are the result of probation or parole technical
9 violations, which are violations of the terms of legal
10 supervision, other than the commission of certain crimes.

11 Technical violations include: missing an appointment with a
12 probation officer; working at a job during times that extended
13 past a curfew; using alcohol or drugs; failing to report a
14 change in address; or associating with another person under
15 legal supervision, even if that other person had no involvement
16 in the defendant's crime. According to Confined and Costly:
17 How Supervision Violations are Filling Prisons and Burdening
18 Budgets, June 2019, a report of the Council of State Governments
19 Justice Center, in 2017 fifty-three per cent of all prison
20 admissions in the State were the result of technical violations.



1 The legislature further finds that the foregoing practices
2 have unequal impacts. Native Hawaiians, Pacific Islanders,
3 Black people, and poor people are disproportionately
4 overrepresented at every stage of the criminal justice system,
5 including the overcrowded jails and prisons. Research shows
6 that incarceration interferes with employment, housing, health
7 care, child custody, and other life opportunities, and results
8 in negative impacts to families and communities.

9 The legislature also finds that incarceration for technical
10 violations of probation is expensive. The State currently
11 spends \$219 per day, or \$79,935 per year, to incarcerate just
12 one person. Research shows that, in contrast, community-based
13 services are a fraction of the cost of incarceration. Research
14 also shows that investment in access to employment; housing;
15 social services; and voluntary, community-based substance use
16 treatment, mental health, and re-entry programs reduce
17 recidivism more effectively than incarceration.

18 The purpose of this Act is to reform probation procedures
19 to reduce the incarcerated population. Specifically, this Act:

- 20 (1) Creates a good time credit system, by which a
21 defendant on probation may reduce the defendant's



1 sentence through compliance with conditions of
2 probation;

3 (2) Provides that a condition of probation that prohibits
4 unnecessary associations may only apply with respect
5 to certain persons having a connection to the
6 defendant's underlying crime or the prosecution of the
7 crime;

8 (3) Provides that a condition of probation that prohibits
9 the possession or use of alcohol or unauthorized drugs
10 may only be imposed if it is reasonably related to the
11 crime for which the defendant was convicted;

12 (4) Provides that substance abuse treatment shall not be
13 required of a defendant on probation if a program is
14 not in the county of the defendant's residence and if
15 the defendant has not been accepted into a program;
16 and

17 (5) Prohibits incarceration for certain technical
18 violations.

19 SECTION 2. Chapter 706, Hawaii Revised Statutes, is
20 amended by adding a new section to part II to be appropriately
21 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 days from the defendant's sentence for
7 every days the defendant is in compliance with the
8 conditions 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 706-624, Hawaii Revised Statutes, is
17 amended by amending subsection (2) to read as follows:

18 "(2) Discretionary conditions. The court may provide, as
19 further conditions of a sentence of probation, to the extent
20 that the conditions are reasonably related to the factors set
21 forth in section 706-606 and to the extent that the conditions



1 involve only deprivations of liberty or property as are
2 reasonably necessary for the purposes indicated in section 706-
3 606(2), that the defendant:

4 (a) Serve a term of imprisonment to be determined by the
5 court at sentencing in class A felony cases under
6 section 707-702, not exceeding two years in class A
7 felony cases under part IV of chapter 712, not
8 exceeding eighteen months in class B felony cases, not
9 exceeding one year in class C felony cases, not
10 exceeding six months in misdemeanor cases, and not
11 exceeding five days in petty misdemeanor cases;
12 provided that notwithstanding any other provision of
13 law, any order of imprisonment under this subsection
14 that provides for prison work release shall require
15 the defendant to pay thirty per cent of the
16 defendant's gross pay earned during the prison work
17 release period to satisfy any restitution order. The
18 payment shall be handled by the adult probation
19 division and shall be paid to the victim on a monthly
20 basis;



- 1 (b) Perform a specified number of hours of services to the
2 community as described in section 706-605(1)(d);
- 3 (c) Support the defendant's dependents and meet other
4 family responsibilities;
- 5 (d) Pay a fine imposed pursuant to section 706-605(1)(b);
- 6 (e) Work conscientiously at suitable employment or pursue
7 conscientiously a course of study or vocational
8 training that will equip the defendant for suitable
9 employment;
- 10 (f) Refrain from engaging in a specified occupation,
11 business, or profession bearing a reasonably direct
12 relationship to the conduct constituting the crime or
13 engage in the specified occupation, business, or
14 profession only to a stated degree or under stated
15 circumstances;
- 16 (g) Refrain from frequenting specified kinds of places or
17 from associating unnecessarily with specified
18 persons[7]; provided that the court shall not prohibit
19 association with any person unless the person has or
20 had any involvement in the crime for which the
21 defendant was convicted, or in any events leading to



1 the arrest, prosecution, or conviction of the
2 defendant; including [the] any victim of the crime,
3 any ~~[witnesses,]~~ witness, regardless of whether ~~[they]~~
4 the witness actually testified in the prosecution~~[,]~~;
5 any law enforcement ~~[officers, co-defendants,]~~
6 officer; any co-defendant; or any other ~~[individuals~~
7 ~~with whom contact may adversely affect the~~
8 ~~rehabilitation or reformation of the person~~
9 ~~convicted,]~~ relevant individual;

10 (h) Refrain from the use of alcohol or any use of narcotic
11 drugs or controlled substances without a prescription;
12 provided that this condition may only be imposed if
13 the possession or use of alcohol or prohibited drugs
14 is reasonably related to the offense for which the
15 defendant was convicted;

16 (i) Refrain from possessing a firearm, ammunition,
17 destructive device, or other dangerous weapon;

18 (j) Undergo available medical or mental health assessment
19 and treatment, including assessment and treatment for
20 substance abuse dependency, and remain in a specified
21 facility if required for that purpose; provided that



1 the court shall not require the defendant to undergo a
2 substance abuse treatment program if no qualifying
3 substance abuse treatment program is available in the
4 county in which the defendant resides, or if no
5 qualifying substance abuse program accepts the
6 defendant, in spite of the defendant's good faith
7 efforts to enter into qualifying substance abuse
8 treatment programs;

9 (k) Reside in a specified place or area or refrain from
10 residing in a specified place or area;

11 (l) Submit to periodic urinalysis or other similar testing
12 procedure;

13 (m) Refrain from entering specified geographical areas
14 without the court's permission;

15 (n) Refrain from leaving the person's dwelling place
16 except to go to and from the person's place of
17 employment, the office of the person's physician or
18 dentist, the probation office, or any other location
19 as may be approved by the person's probation officer
20 pursuant to court order. As used in this paragraph,



1 "dwelling place" includes the person's yard or, in the
2 case of condominiums, the common elements;

3 (o) Comply with a specified curfew;

4 (p) Submit to monitoring by an electronic monitoring
5 device;

6 (q) Submit to a search by any probation officer, with or
7 without a warrant, of the defendant's person,
8 residence, vehicle, or other sites or property under
9 the defendant's control, based upon the probation
10 officer's reasonable suspicion that illicit substances
11 or contraband may be found on the person or in the
12 place to be searched;

13 (r) Sign a waiver of extradition and pay extradition costs
14 as determined and ordered by the court;

15 (s) Comply with a service plan developed using current
16 assessment tools; and

17 (t) Satisfy other reasonable conditions as the court may
18 impose."

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



1 **"§706-625 Revocation, modification of probation**

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

9 (2) The prosecuting attorney, the defendant's probation
10 officer, and the defendant shall be notified by the movant in
11 writing of the time, place, and date of any such hearing, and of
12 the grounds upon which action under this section is proposed.
13 The prosecuting attorney, the defendant's probation officer, and
14 the defendant may appear in the hearing to oppose or support the
15 application, and may submit evidence for the court's
16 consideration. The defendant shall have the right to be
17 represented by counsel. For purposes of this section the court
18 shall not be bound by the Hawaii rules of evidence, except for
19 the rules pertaining to privileges.

20 (3) The court shall revoke probation if the defendant has
21 inexcusably failed to comply with a substantial requirement



1 imposed as a condition of the order or has been convicted of a
2 felony. The court may revoke the suspension of sentence or
3 probation if the defendant has been convicted of another crime
4 other than a felony.

5 (4) The court shall not impose incarceration upon a
6 defendant for the defendant's failure to comply with a condition
7 of probation if the defendant's failure to comply constitutes
8 solely a technical violation.

9 (5) The court shall not revoke probation based on the
10 defendant's failure to undergo and complete a substance abuse
11 treatment program if there is no qualifying substance abuse
12 treatment program available in the county in which the defendant
13 resides, or if no qualifying substance abuse program accepted
14 the defendant, in spite of the defendant's good faith efforts to
15 enter into qualifying substance abuse treatment programs.

16 (6) The court shall not revoke probation based on the
17 defendant's failure to refrain from the use of alcohol, or any
18 use of narcotic drugs or controlled substances without a
19 prescription, unless the possession or use of alcohol or
20 prohibited drugs is reasonably related to the offense for which
21 the defendant was convicted.



1 ~~[(4)]~~ (7) The court may modify the requirements imposed on
2 the defendant or impose further requirements, if it finds that
3 such action will assist the defendant in leading a law-abiding
4 life.

5 ~~[(5)]~~ (8) When the court revokes probation, it may impose
6 on the defendant any sentence that might have been imposed
7 originally for the crime of which the defendant was convicted.

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

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



1 other suitable substance abuse treatment program, the defendant
2 shall be subject to revocation of probation, except as provided
3 in subsection (5), and incarceration[-], except as provided in
4 subsection (4). The 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.]~~

(10) Nothing in this subsection or subsection (5) shall be
construed to give rise to a cause of action against the State, a
state employee, or a treatment provider.

(11) As used in this section:

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

"Substance abuse treatment program" means drug or substance
abuse treatment services 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.

"Technical violation" means any conduct that violates a
condition of community supervision, other than the commitment of
a new misdemeanor offense under chapter 134, chapter 707, or
section 709-906, or a new felony offense."



1 SECTION 5. Section 706-626, Hawaii Revised Statutes, is
2 amended to read as follows:

3 "**§706-626 Summons or arrest of defendant on probation;**
4 **commitment without bail.** ~~[A~~t~~]~~ (1) The following may apply any
5 time before the discharge of the defendant or the termination of
6 the period of probation[+], to the extent applicable:

7 ~~[+1+]~~ (a) The court may, in connection with the probation,
8 summon the defendant to appear before it or may issue
9 a warrant for the defendant's arrest;

10 (b) A probation or law enforcement officer, having
11 probable cause to believe that the defendant has
12 failed to comply with a requirement imposed as a
13 condition of the order, may, if the failure to comply
14 was a technical violation, issue the defendant a
15 written notice of a court hearing that states the
16 defendant's alleged violation and the date, time,
17 location and purpose of the hearing;

18 ~~[+2+]~~ (c) A probation or law enforcement officer, having
19 probable cause to believe that the defendant has
20 failed to comply with a requirement imposed as a
21 condition of the order, may, if the failure to comply



1 was not a technical violation, arrest the defendant
2 without a warrant, and the defendant shall be held in
3 custody pending the posting of bail pursuant to a bail
4 schedule established by the court, or until a hearing
5 date is set; provided that when the punishment for the
6 original offense does not exceed one year, the
7 probation or law enforcement officer may admit the
8 probationer to bail; or

9 [~~+3+~~] (d) The court, if there is probable cause to believe
10 that the defendant has committed another crime or has
11 been held to answer therefor, may commit the defendant
12 without bail, pending a determination of the charge by
13 the court having jurisdiction thereof.

14 (2) As used in this section, "technical violation" has the
15 same meaning as in section 706-625."

16 SECTION 6. This Act does not affect rights and duties that
17 matured, penalties that were incurred, and proceedings that were
18 begun before its effective date.

19 SECTION 7. Statutory material to be repealed is bracketed
20 and stricken. New statutory material is underscored.



1 SECTION 8. This Act shall take effect upon its approval.

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INTRODUCED BY: Clu



Report Title:

Probation; Crimes; Conditions; Revocation; Substance Abuse

Description:

Creates a good time credit system, by which criminal defendant on probation may reduce their time on probation through compliance with conditions of probation. Provides that a condition of probation that prohibits unnecessary associations may only apply with respect to certain persons having a connection to the underlying crime or the prosecution of the crime. Provides that a condition that prohibits the possession or use of alcohol or unauthorized drugs may only be imposed if it reasonably related to the crime for which the defendant was convicted. Provides that substance abuse treatment shall not be required of a defendant on probation if a program is not available in the county of the defendant's residence or if the defendant has not been accepted into a program. Prohibits incarceration for certain technical violations.

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