

ACT 140

H.B. NO. 2515

A Bill for an Act Relating to Crime.

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

SECTION 1. In June 2011, the governor, chief justice, senate president, speaker of the house of representatives, and director of public safety collaborated to develop a data-driven justice reinvestment strategy to bring out-of-state prisoners back to Hawaii, reduce spending on corrections, and reinvest savings generated in strategies to reduce recidivism and crime and increase public safety. The group sought assistance from the Bureau of Justice Assistance, a division of the United States Department of Justice, and the Pew Center on the States. The group established a bipartisan, inter-branch justice reinvestment working group comprising leading state and local officials to receive intensive technical assistance from the Council of State Governments Justice Center. The Council of State Governments Justice Center assisted the working group in analyzing data from Hawaii's criminal justice and corrections systems.

The data analysis revealed that the rates of crime and victimization and arrests and felony convictions for violent and property crimes have declined. However, the incarcerated population and the number of those under probation supervision, in some cases, have increased. From fiscal year 2000 to fiscal year 2011, the State's incarcerated population grew eighteen per cent, from 5,118 to 6,043. Expenditures for the corrections division of the department of public safety increased seventy per cent, from \$112,000,000 in fiscal year 2000 to \$190,000,000 in fiscal year 2011. Approximately one-third of Hawaii's incarcer-

ated population is housed in out-of-state facilities. The cost of housing offenders in out-of-state facilities was \$45,000,000 in fiscal year 2011.

The analysis also identified other areas needing improvement: the sentencing of felony drug offenders and probation terms for offenders. The purpose of this Act is to address those areas.

Under section 706-622.5, Hawaii Revised Statutes, the court may impose a probation sentence for an offender's first felony conviction for a drug possession offense. If an offender faces a second felony conviction for drug possession and is subject to the repeat offender statute, the court is required to impose a prison sentence. This Act amends section 706-622.5, Hawaii Revised Statutes, to allow second-time drug offenders to be eligible for probation.

Probation terms for class B and C felons in Hawaii average five years while the national average is three years. The risk of recidivism is highest during the first and second year of probation. Therefore, the public safety benefit of supervising offenders for the third, fourth, and fifth years is less significant. Moreover, supervising offenders for such long periods requires resources that could be spent supervising offenders who pose a higher risk or have recently been placed on probation. This Act modifies the probation terms for certain class B and C offenders to not exceed four years.

SECTION 2. Section 706-622.5, Hawaii Revised Statutes, is amended as follows:

1. By amending the title to read:

“§706-622.5 Sentencing for [first-time] drug offenders; expungement.”

2. By amending subsection (1) to read:

“(1) Notwithstanding section 706-620(3), a person convicted for the first or second time for any offense under section 329-43.5 involving the possession or use of drug paraphernalia or any felony offense under part IV of chapter 712 involving the possession or use of any dangerous drug, detrimental drug, harmful drug, intoxicating compound, marijuana, or marijuana concentrate, as defined in section 712-1240, but not including any offense under part IV of chapter 712 involving the distribution or manufacture of any such drugs or substances and not including any methamphetamine trafficking offenses under sections 712-1240.7 and 712-1240.8, is eligible to be sentenced to probation under subsection (2) if the person meets the following criteria:

- (a) The court has determined that the person is nonviolent after reviewing the person's criminal history, the factual circumstances of the offense for which the person is being sentenced, and any other relevant information;
- (b) The person has been assessed by a certified substance abuse counselor to be in need of substance abuse treatment due to dependency or abuse under the applicable Diagnostic and Statistical Manual and Addiction Severity Index; and
- (c) Except for those persons directed to substance abuse treatment under the supervision of the drug court, the person presents a proposal to receive substance abuse treatment in accordance with the treatment plan prepared by a certified substance abuse counselor through a substance abuse treatment program that includes an identified source of payment for the treatment program.”

3. By amending subsection (4) to read:

“(4) The court, upon written application from a person sentenced under this part, shall issue a court order to expunge the record of conviction for that particular offense; provided that a person has successfully completed the sub-

stance abuse treatment program and complied with other terms and conditions of probation. A person sentenced to probation under this section who has not previously been sentenced under this section shall be eligible for one time only for expungement under this subsection.”

SECTION 3. Section 706-623, Hawaii Revised Statutes, is amended by amending subsection (1) to read as follows:

“(1) When the court has sentenced a defendant to be placed on probation, the period of probation shall be as follows, unless the court enters the reason therefor on the record and sentences the defendant to a shorter period of probation:

- (a) Ten years upon conviction of a class A felony;
- (b) Five years upon conviction of a class B or class C felony[;] under part II, V, or VI of chapter 707, chapter 709, and part I of chapter 712 and four years upon conviction of any other class B or C felony;
- (c) One year upon conviction of a misdemeanor; except that upon a conviction under section 586-4, 586-11, or 709-906, the court may sentence the defendant to a period of probation not exceeding two years; or
- (d) Six months upon conviction of a petty misdemeanor; provided that up to one year may be imposed upon a finding of good cause.

The court, on application of a probation officer, on application of the defendant, or on its own motion, may discharge the defendant at any time. Prior to granting early discharge, the defendant’s probation officer shall be required to report to the court concerning the defendant’s compliance or non-compliance with the conditions of the defendant’s probation and the court shall afford the prosecuting attorney an opportunity to be heard. The terms of probation provided in this part, other than in this section, shall not apply to sentences of probation imposed under section 706-606.3.”

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; provided that section 3 shall take effect on January 1, 2013, and apply to offenses committed on or after that date.

(Approved June 20, 2012.)