



GOV. MSG. NO. 1242

EXECUTIVE CHAMBERS  
HONOLULU

NEIL ABERCROMBIE  
GOVERNOR

June 20, 2012

The Honorable Shan Tsutsui, President  
and Members of the Senate  
Twenty-Sixth State Legislature  
State Capitol, Room 409  
Honolulu, Hawaii 96813

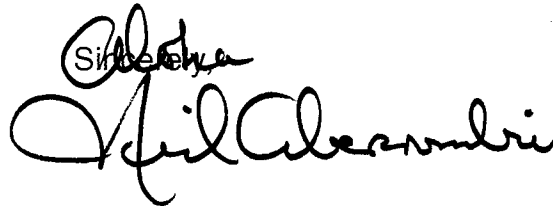
The Honorable Calvin Say, Speaker  
and Members of the House  
Twenty-Sixth State Legislature  
State Capitol, Room 431  
Honolulu, Hawaii 96813

Dear President Tsutsui, Speaker Say and Members of the Legislature:

This is to inform you that on June 20, 2012, the following bill was signed into law:

HB2515 HD3 SD2 CD1

RELATING TO CRIME.  
**Act 140 (12)**

  
The word "Signed" is written in small text above the signature.

NEIL ABERCROMBIE  
Governor, State of Hawaii

Approved by the Governor  
on JUN 20 2012  
HOUSE OF REPRESENTATIVES  
TWENTY-SIXTH LEGISLATURE, 2012  
STATE OF HAWAII

ORIGINAL

ACT 140  
H.B. NO. 2515  
H.D. 3  
S.D. 2  
C.D. 1

---

## A BILL FOR AN ACT

RELATING TO CRIME.

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

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

17           The data analysis revealed that the rates of crime and  
18 victimization and arrests and felony convictions for violent and

HB2515 CD1 HMS 2012-3725-2



1 property crimes have declined. However, the incarcerated  
2 population and the number of those under probation supervision,  
3 in some cases, have increased. From fiscal year 2000 to fiscal  
4 year 2011, the State's incarcerated population grew eighteen per  
5 cent, from 5,118 to 6,043. Expenditures for the corrections  
6 division of the department of public safety increased seventy  
7 per cent, from \$112,000,000 in fiscal year 2000 to \$190,000,000  
8 in fiscal year 2011. Approximately one-third of Hawaii's  
9 incarcerated population is housed in out-of-state facilities.  
10 The cost of housing offenders in out-of-state facilities was  
11 \$45,000,000 in fiscal year 2011.

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

16 Under section 706-622.5, Hawaii Revised Statutes, the court  
17 may impose a probation sentence for an offender's first felony  
18 conviction for a drug possession offense. If an offender faces  
19 a second felony conviction for drug possession and is subject to  
20 the repeat offender statute, the court is required to impose a  
21 prison sentence. This Act amends section 706-622.5, Hawaii



1 Revised Statutes, to allow second-time drug offenders to be  
2 eligible for probation.

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

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

15 1. By amending the title to read:

16 "**§706-622.5 Sentencing for [~~first-time~~] drug offenders;**  
17 **expungement.**"

18 2. By amending subsection (1) to read:

19 "(1) Notwithstanding section 706-620(3), a person  
20 convicted for the first or second time for any offense under  
21 section 329-43.5 involving the possession or use of drug  
22 paraphernalia or any felony offense under part IV of chapter 712



1 involving the possession or use of any dangerous drug,  
2 detrimental drug, harmful drug, intoxicating compound,  
3 marijuana, or marijuana concentrate, as defined in section 712-  
4 1240, but not including any offense under part IV of chapter 712  
5 involving the distribution or manufacture of any such drugs or  
6 substances and not including any methamphetamine trafficking  
7 offenses under sections 712-1240.7 and 712-1240.8, is eligible  
8 to be sentenced to probation under subsection (2) if the person  
9 meets the following criteria:

10 (a) The court has determined that the person is nonviolent  
11 after reviewing the person's criminal history, the  
12 factual circumstances of the offense for which the  
13 person is being sentenced, and any other relevant  
14 information;

15 (b) The person has been assessed by a certified substance  
16 abuse counselor to be in need of substance abuse  
17 treatment due to dependency or abuse under the  
18 applicable Diagnostic and Statistical Manual and  
19 Addiction Severity Index; and

20 (c) Except for those persons directed to substance abuse  
21 treatment under the supervision of the drug court, the  
22 person presents a proposal to receive substance abuse



1 treatment in accordance with the treatment plan  
2 prepared by a certified substance abuse counselor  
3 through a substance abuse treatment program that  
4 includes an identified source of payment for the  
5 treatment program."

6 3. By amending subsection (4) to read:

7 "(4) The court, upon written application from a person  
8 sentenced under this part, shall issue a court order to expunge  
9 the record of conviction for that particular offense; provided  
10 that a person has successfully completed the substance abuse  
11 treatment program and complied with other terms and conditions  
12 of probation. A person sentenced to probation under this  
13 section who has not previously been sentenced under this section  
14 shall be eligible for one time only for expungement under this  
15 subsection."

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

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

22 (a) Ten years upon conviction of a class A felony;



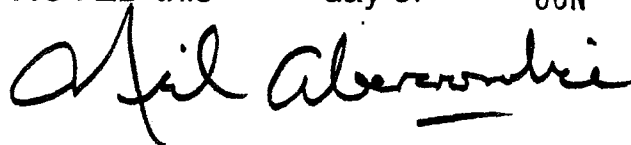
- 1 (b) Five years upon conviction of a class B or class C  
2 felony[+] under part II, V, or VI of chapter 707,  
3 chapter 709, and part I of chapter 712 and four years  
4 upon conviction of any other class B or C felony;
- 5 (c) One year upon conviction of a misdemeanor; except that  
6 upon a conviction under section 586-4, 586-11, or 709-  
7 906, the court may sentence the defendant to a period  
8 of probation not exceeding two years; or
- 9 (d) Six months upon conviction of a petty misdemeanor;  
10 provided that up to one year may be imposed upon a  
11 finding of good cause.
- 12 The court, on application of a probation officer, on application  
13 of the defendant, or on its own motion, may discharge the  
14 defendant at any time. Prior to granting early discharge, the  
15 defendant's probation officer shall be required to report to the  
16 court concerning the defendant's compliance or non-compliance  
17 with the conditions of the defendant's probation and the court  
18 shall afford the prosecuting attorney an opportunity to be  
19 heard. The terms of probation provided in this part, other than  
20 in this section, shall not apply to sentences of probation  
21 imposed under section 706-606.3."



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

3 SECTION 5. This Act shall take effect upon its approval;  
4 provided that section 3 shall take effect on January 1, 2013,  
5 and apply to offenses committed on or after that date.

APPROVED this 20 day of JUN, 2012



GOVERNOR OF THE STATE OF HAWAII

