

JAN 20 2023

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, at the end of the
2 2021 fiscal year, the judiciary's adult client services branch
3 was overseeing approximately eighteen thousand five hundred
4 offenders, all of whom were placed on probation or subject to
5 court-ordered control, including offenders released from the
6 Hawaii state hospital. Of this number, national studies
7 indicate that between eleven thousand to fourteen thousand
8 offenders were likely under the influence of drugs or alcohol
9 during the commission of their offense, committed the offense to
10 support a drug addiction, were charged with a substance-related
11 crime, or are regular substance users. A growing body of
12 research suggests that more than sixty per cent of persons who
13 are arrested for a felony offense, including both drug-related
14 and non-drug-related crimes, test positive for recent drug use
15 at the time of booking.

16 The legislature further finds that, without proper
17 supervision and treatment, an offender may fail on probation and



1 commit new offenses. The offender's reengagement in criminal
2 conduct leads to victimization of additional persons, further
3 property loss, and greater expenditure of the State's limited
4 resources to identify, apprehend, prosecute, and return the
5 offender to confinement. Persons charged with repeat offenses
6 pose a substantially greater risk of criminal recidivism.

7 The legislature notes that in 2004, Hawaii was the first
8 state in the nation to develop a high-intensity, collaborative
9 probation strategy known as Hawaii's opportunity probation with
10 enforcement, or HOPE, to effect behavioral change in
11 higher-risk, higher-need felony probationers. The key to this
12 probation strategy is that it imposes immediate consequences for
13 probation violations. This allows the probationer to learn by
14 pairing a bad choice (a probation violation) with a consequence
15 (a consistent and proportionate jail sanction). The program may
16 be characterized as "Parenting 101". Hawaii's opportunity
17 probation with enforcement hearings typically deal with a single
18 recent violation, rather than allowing multiple violations to
19 accumulate without consequences, as often occurs with regular
20 probation.



1 The legislature recognizes that, after starting in 2004
2 with a small group of thirty-four probationers who were either
3 sex offenders or offenders having significant substance use
4 issues, the program quickly grew to more than one thousand five
5 hundred participants by 2007. The program expanded without
6 requiring additional courtrooms, judges, court clerks, probation
7 offers, police officers, or jail cells. The funds appropriated
8 by the legislature were spent almost entirely on expanding the
9 program's capacity for drug testing and treatment. By 2016, the
10 program had expanded to include more than two thousand
11 participants.

12 The legislature notes that, since 2007, the Hawaii's
13 opportunity probation with enforcement program has been the
14 focus of numerous top-quality studies and has been adopted by
15 courts across the nation. One study conducted in 2007 by
16 researchers from Pepperdine university and the university of
17 California, Los Angeles, found that probationers who
18 participated in the program were fifty-five per cent less likely
19 to be arrested for a new crime. They were also seventy-two per
20 cent less likely to use drugs, sixty-one per cent less likely to
21 miss appointments with their supervisory officers, and



1 fifty-three per cent less likely to have their probation
2 revoked. As a result, these probationers served or were
3 sentenced to an average of forty-eight per cent fewer days of
4 incarceration than the control group. Notably, the study found
5 that while probationers in the program and those on regular
6 probation served approximately the same number of days in jail,
7 probationers in the program spent half as many days in prison
8 for revocations or new convictions. Additionally, women in the
9 program failed at probation and went to prison fifty per cent
10 less often than women on regular probation. Similarly, native
11 Hawaiians in the program were forty-two per cent less likely to
12 have their probation revoked and to be sent to prison when
13 compared to native Hawaiians on regular probation. Hawaii's
14 opportunity probation with enforcement participants were also
15 more likely than regular probationers to receive early
16 termination of probation for successful compliance with all
17 terms and conditions of their probation.

18 The legislature finds that the State has had substantial
19 success with this program, in terms of fewer crimes committed,
20 less need for long-term incarceration, and increased
21 productivity, self-esteem, and overall well-being for program



1 participants. The program is also cost-effective, since a
2 single dedicated judge can simultaneously supervise more than
3 two thousand felony probationers. Given these successes, the
4 legislature believes that this program should be implemented on
5 a broader scale, in a format that has already proven effective.

6 Accordingly, the purpose of this Act is to implement the
7 Hawaii's opportunity probation with enforcement program
8 statewide. The goal of the program shall be to reduce crime,
9 recidivism, and mass incarceration while supporting
10 probationers' desire to be contributing, law-abiding citizens,
11 through a combined system of accountability and treatment
12 options.

13 SECTION 2. Chapter 706, Hawaii Revised Statutes, is
14 amended by adding a new section to part I to be appropriately
15 designated and to read as follows:

16 "§706- Hawaii's opportunity probation with enforcement
17 program; purpose; requirements. (1) There is established the
18 Hawaii's opportunity probation with enforcement program to help
19 participants comply with terms and conditions of supervision,
20 succeed on probation or deferral, and avoid going to prison.
21 The program shall follow the Hawaii's opportunity probation with



1 enforcement model, as developed and implemented in the city and
2 county of Honolulu from 2004 through 2019. The program shall be
3 administered by the judiciary, in consultation with the office
4 of the public defender and the prosecuting attorneys for the
5 counties of Hawaii, Maui, Kauai, and the city and county of
6 Honolulu.

7 (2) The purpose of the program shall be to reduce
8 recidivism by having the court, attorneys, and probation
9 officers work together closely to:

10 (a) Hold participants immediately accountable for
11 probation or deferral violations;

12 (b) Provide swift, certain, consistent, and proportionate
13 jail sanctions for probation or deferral violations;

14 (c) Provide support and accountability by offering:

15 (i) Probation officers trained in evidence-based
16 practices;

17 (ii) A judge knowledgeable about addiction who will
18 encourage the participants but also be firm and
19 hold participants accountable for their
20 actions; and



1 (iii) A swift, certain, consistent, and proportionate
2 sanctions system to help keep participants
3 sober and ensure that participants see their
4 probation officers and treatment providers, if
5 needed;

6 (d) Coordinate with various treatment programs, including
7 sex offender treatment, mental health treatment,
8 substance abuse treatment, and domestic violence
9 intervention programs;

10 (e) Implement randomized drug testing for appropriate
11 participants; and

12 (f) Focus on higher-risk participants to achieve the
13 largest gains in reducing recidivism.

14 (3) The court shall hold hearings at the circuit court of
15 the applicable circuit, with both a prosecuting attorney and the
16 participant's defense attorney appearing at each hearing. To
17 promote consistency, one primary judge and one backup judge
18 shall be assigned to implement the program in each circuit.

19 (4) Participants shall be admitted to the program at the
20 discretion of the court or their assigned probation officer,
21 based upon a determination by the court or assigned probation

1 officer that the participant is likely to benefit from the
2 program.

3 (5) After admission to the program, each participant shall
4 attend a Hawaii's opportunity probation with enforcement warning
5 hearing with the judge, who shall inform the participant of the:

6 (a) Overall goals and expectations of the program,
7 including the fact that the court, probation officer,
8 prosecuting attorney, and defense attorney are working
9 together to help the participant succeed on probation
10 or deferral;

11 (b) Terms and conditions of probation or deferral that, if
12 violated, will subject the participant to jail
13 sanctions;

14 (c) Swift, certain, consistent, and proportionate jail
15 sanctions to be imposed in the event that the
16 participant violates the terms and conditions of
17 probation or deferral;

18 (d) Ability of the judge to terminate the participant's
19 probation early upon a finding that the participant
20 has been in compliance with probation terms and
21 conditions for at least two years;



1 (e) Specific rules and expectations relating to randomized
2 drug testing; court appearances; scheduled meetings
3 with the probation officer; participation in
4 treatment, as required by the terms and conditions of
5 the participant's probation or deferral; and
6 compliance with all other terms and conditions of the
7 probation or deferral; and

8 (f) Potential that, if terms and conditions are violated,
9 probation may be revoked or the deferral set aside,
10 and the participant resentenced to incarceration
11 pursuant to section 706-625 or 853-3, Hawaii Revised
12 Statutes.

13 (6) The probation officer assigned to a participant shall
14 file a motion to enlarge the conditions of probation or deferral
15 pursuant to section 706-625 or 853-1, Hawaii Revised Statutes,
16 or revoke probation or set aside deferral pursuant to section
17 706-625 or 853-3, Hawaii Revised Statutes, if the participant
18 violates the terms and conditions of probation or deferral by
19 testing positive for drugs, refusing to satisfactorily
20 participate in treatment, failing to meet with their probation
21 officer as scheduled, or violates other terms and conditions.



1 (7) The probation officer assigned to a participant shall
2 conduct randomized drug testing of the participant, if
3 appropriate. If the participant tests positive for drug use and
4 admits to having used drugs, the probation officer shall:

5 (a) Immediately take the participant into custody;
6 (b) File a motion to enlarge the conditions of probation
7 or deferral pursuant to section 706-625 or 853-1,
8 Hawaii Revised Statutes, or revoke probation or set
9 aside deferral pursuant to section 706-625 or 853-3,
10 Hawaii Revised Statutes; and

11 (c) Schedule a court hearing to be held two business days
12 after the positive drug test result.

13 (8) At any hearing on a motion to enlarge the conditions
14 of probation or deferral, revoke probation, or set aside
15 deferral, the participant shall be represented by a defense
16 attorney, and shall have the right to contest the alleged
17 violation pursuant to section 706-625, Hawaii Revised Statutes.
18 The standard of proof for any contested hearing shall be a
19 preponderance of the evidence.



1 (9) If the court finds that enlargement of the conditions
2 of probation or deferral is warranted, the court shall enlarge
3 the participant's sentence as follows:

4 (a) For failing to appear for an appointment or drug test
5 as scheduled but appearing within twenty-four hours of
6 the missed appointment or drug test, and testing
7 negative, no more than seven hours of confinement in
8 the courthouse cellblock;

9 (b) For a positive drug test result, after which the
10 participant admits drug use, two days of jail;

11 (c) For a positive drug test result, after which the
12 participant denies drug use, and the positive result
13 is confirmed by a laboratory, fifteen days of jail;

14 (d) For failing to provide a sufficient urine sample for
15 drug testing as directed, fifteen days of jail;

16 (e) For tampering with the drug testing procedure,
17 including but not limited to providing diluted
18 samples, using urine adulterants, or swapping or
19 otherwise providing altered samples, thirty days of
20 jail;



1 (f) For failing to appear for an appointment or drug test
2 as scheduled, following which the participant does not
3 appear within five or more days after the missed
4 appointment or drug test, thirty days of jail; and
5 (g) For conviction of a new crime, failure to attend or
6 complete treatment, or other violations of the terms
7 and conditions of probation or deferral not otherwise
8 specified, either a period of jail to be determined by
9 the court, or revocation of probation or setting aside
10 of the deferral.

11 (10) For purposes of this Act:
12 "Defense attorney" means any attorney retained, appointed,
13 or ordered to represent the participant, including the public
14 defender or any deputy public defender.

15 "Deferral" means deferred acceptance of guilty or nolo
16 contendere plea pursuant to section 853-1, Hawaii Revised
17 Statutes.

18 "Jail" means any type of detention administered by the
19 department of public safety, or its successor agency.

20 "Participant" means a defendant who has either been
21 convicted of a felony offense or granted a deferral and who has

1 been accepted for placement in the Hawaii's opportunity
2 probation with enforcement program.

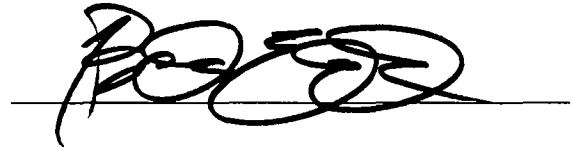
3 "Prosecuting attorney" means the prosecuting attorney or
4 any deputy prosecuting attorney for the applicable county."

5 SECTION 3. New statutory material is underscored.

6 SECTION 4. This Act shall take effect upon its approval.

7

INTRODUCED BY:

A handwritten signature in black ink, appearing to be 'ROBERT', is written over a horizontal line.

S.B. NO. 904

Report Title:

Judiciary; Offenders; Hawaii's Opportunity Probation With Enforcement Program

Description:

Establishes a statewide program modeled after the Hawaii's Opportunity Probation with Enforcement (HOPE) program that was implemented in the City and County of Honolulu from 2004 through 2019. Requires the Judiciary to administer the program.

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

