



The Judiciary, State of Hawai'i

Testimony to the House Committee on Judiciary

Representative Scott Y. Nishimoto, Chair

Representative Joy A. San Buenaventura, Vice Chair

Thursday, January 25, 2018, 2:00 p.m.

State Capitol, Conference Room 325

by

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Probation Administrator, First Circuit

Bill No. and Title: House Bill No. 1667, Relating to Probation.

Purpose: Makes housekeeping amendment to probation statute to reflect decriminalization of certain drug paraphernalia-related offenses.

Judiciary's Position:

The Judiciary supports this bill, which is part of the Judiciary's legislative package. This bill seeks to make the law governing probation for drug offenders consistent with changes to the Uniform Controlled Substances Act, chapter 329, Hawaii Revised Statutes (HRS), enacted under Act 72, Sessions Laws of Hawaii 2017 (Act 72).

Act 72 amended section 329-43.5 (a) and (b), HRS, to decriminalize certain offenses related to the use, possession, and delivery of drug paraphernalia. Under Act 72, a violation of these offenses is no longer a class C felony, but a civil violation punishable by a fine no greater than \$500. As commission of these offenses no longer constitutes a crime, this bill removes the statutory reference for section 329-43.5, HRS, from section 706-622.5(1), HRS, which governs probation eligibility for first or second time offenders convicted of certain criminal drug offenses.



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The Judiciary requests an amendment to the bill, (House Bill No. 1667, House Draft 1 Proposed, attached hereto), which more precisely aligns the probation statute with Act 72's amendments than the original measure. As Act 72 decriminalized only offenses established within subsections (a) and (b) of section 329-43.5, HRS, the proposed HD1 excepts only those offenses from the category of drug paraphernalia offenses for which a first or second time offender may be eligible for probation.

The Judiciary respectfully requests passage of the proposed House Draft. 1. Thank you for the opportunity to testify on House Bill No. 1667.

Attachment

Report Title:

Judiciary Package; Probation; Drug Paraphernalia; Housekeeping Amendment

Description:

Makes housekeeping amendment to probation statute consistent with partial decriminalization of the offense of prohibited acts related to drug paraphernalia, section 329-43.5, HRS.

A BILL FOR AN ACT

RELATING TO PROBATION.

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

1 SECTION 1. Section 706-622.5, Hawaii Revised Statutes, is
2 amended by amending subsection (1) to read as follows:

3 "(1) Notwithstanding section 706-620(3), a person convicted
4 for the first or second time for any offense under
5 section 329-43.5, except offenses under subsections
6 (a) and (b) of that section which constitute
7 violations, involving the possession or use of drug
8 paraphernalia or any felony offense under part IV of
9 chapter 712 involving the possession or use of any
10 dangerous drug, detrimental drug, harmful drug,
11 intoxicating compound, marijuana, or marijuana
12 concentrate, as defined in section 712-1240, but not
13 including any offense under part IV of chapter 712
14 involving the distribution or manufacture of any such
15 drugs or substances and not including any
16 methamphetamine offenses under sections 712-1240.7,
17 712-1240.8 as that section was in effect prior to July
18 1, 2016, 712-1241, and 712-1242, is eligible to be

1 sentenced to probation under subsection (2) if the
2 person meets the following criteria:

3 (a) The court has determined that the person is
4 nonviolent after reviewing the person's criminal
5 history, the factual circumstances of the offense
6 for which the person is being sentenced, and any
7 other relevant information;

8 (b) The person has been assessed by a certified
9 substance abuse counselor to be in need of
10 substance abuse treatment due to dependency or
11 abuse under the applicable Diagnostic and
12 Statistical Manual and Addiction Severity Index;
13 and

14 (c) Except for those persons directed to substance
15 abuse treatment under the supervision of the drug
16 court, the person presents a proposal to receive
17 substance abuse treatment in accordance with the
18 treatment plan prepared by a certified substance
19 abuse counselor through a substance abuse
20 treatment program that includes an identified
21 source of payment for the treatment program."

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

3 SECTION 3. This Act shall take effect upon its approval.