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# STATE OF HAWAII

## Department of the Attorney General

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### PROBATION AND RECIDIVISM

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HAWAII CRIMINAL JUSTICE DATA CENTER  
RESEARCH AND STATISTICS REPORT (RS06)

JUNE 1988

## FOREWORD

In May of 1986, the Hawaii Criminal Justice Data Center (HCJDC) published a report entitled, "Report on Arrests During Probation". In that report, the HCJDC presented information on the rearrests of offenders on probation. A sample of offenders on probation on or prior to March 1, 1985 was selected, and their criminal activities were studied until September 30, 1985. The study was conducted in order to examine the characteristics of recidivists.

This current report, "Probation and Recidivism", is a follow-up to that previous study. In the current study, the same offenders were tracked until June 30, 1987. In addition, more detailed data were analyzed.

We wish to thank the staff of the Adult Probation Division of the First Circuit Court, especially Mr. Nathaniel Kim, for their assistance in this study.

NCJRS

AUG 9 1988

ACQUISITIONS

# PROBATION AND RECIDIVISM

## TABLE OF CONTENTS

	<u>Page</u>
FOREWORD	i
INTRODUCTION	1
PROBATION	2
METHOD	9
OFFENDER AND PROBATION DATA	13
REARREST INFORMATION	21
REARREST RELATIONSHIPS	31
RECIDIVISM RATES	35
SUMMARY AND DISCUSSION	37
NOTES	40

## PROBATION AND RECIDIVISM

### INTRODUCTION

Probation is a commonly used sentence in the United States. A report by the National Institute of Justice says "Nearly three times as many convicted offenders are placed on probation each year as are sentenced to prison and jail combined."<sup>1</sup> In Hawaii, the ratio is not as high.<sup>2</sup> Still, probationers outnumber incarcerated offenders. In 1985, there were approximately 5,400 offenders on probation in the state, about 3,500 in the First Circuit alone, while there were approximately 1,900 offenders in prison.<sup>3</sup>

Probation is an alternative to imprisonment. With prison overcrowding a serious criminal justice problem, probation becomes more important. An increasing burden will be and is being placed on probation agencies. In comparison to 1985, in 1988 there are approximately 6,000 offenders on probation statewide of which about 4,000 are in the First Circuit alone. Yet, in the First Circuit, there are only 27 authorized positions to supervise the 4,000 probationers. Furthermore, when considering overall budget, the estimated average daily cost of probation is only \$1.25 per offender, while the average daily cost is about \$45.00 per offender for confinement.<sup>4</sup>

Clearly, more attention needs to be given to probation. For this reason, the Hawaii Criminal Justice Data Center (HCJDC) in cooperation with the Adult Probation Division (APD) of the First Circuit Court, took a closer look at probation.<sup>5</sup>

The study examined the characteristics of probationers, tracked the criminal actions of offenders after being placed on probation, and attempted to identify areas that require special attention.<sup>6</sup> The variables or factors that are statistically associated with, or related to recidivism, were also examined in order to help identify the probationer likely to be rearrested.

#### PROBATION

The laws governing probation are found in Chapter 706 of the Hawaii Revised Statutes (HRS).<sup>7</sup> Major changes to the chapter were made by Act 314, Session Laws of Hawaii 1986. Some of those changes are discussed in this section. However, because the offenders in this study were placed on probation prior to 1986, unless otherwise stated, the discussion herein focuses on pre-1986 laws.<sup>8</sup>

HRS section 706-605(1)(a) allows the court to sentence a convicted defendant to probation. Probation is a sentencing alternative that could be used when a sentence of imprisonment is not imposed and the court feels that the offender is in need of supervision.<sup>9</sup> Section 706-620, HRS, establishes some statutory guidelines for the imposition of probation. The commentary accompanying the law states that guidelines are needed because of the broad discretion allowed the court in choosing sentences. The law states that imprisonment should be withheld unless:

- (1) There is undue risk that during the period of probation the defendant will commit another crime; or
- (2) There is a need for treatment that can be best provided in a correctional institute; or
- (3) A lesser sentence will depreciate the seriousness of the crime.

Act 314 amended section 706-620. The law now states that a defendant convicted of a crime may be sentenced to a term of probation unless:

- (1) The crime is first or second degree murder or attempted first or second degree murder;
- (2) The crime is a class A felony;
- (3) The defendant is a repeat offender under section 706-606.5; or
- (4) The defendant is a felony firearm offender as defined in section 706-660.1(b).

Section 706-621 list factors that should be reviewed when considering probation such as the amount of harm caused the victim, circumstances surrounding the crime, prior criminal history, and probable future crime activities. If the defendant did not cause serious harm to the victim, or if the victim induced or facilitated the commission of the crime, or

if the defendant acted under strong provocation, withholding of imprisonment would be favored.

If an offender is sentenced to probation, section 706-623 sets the maximum period of probation as follows:

Felony -	5 years
Misdemeanor -	1 year
Petty Misdemeanor -	6 months

The court, on application of a probation officer or the defendant, or on its own motion may discharge the offender at any time. Although the law allows for early discharge, in practice early discharges are rare.<sup>10</sup>

The court may place conditions on the probation including incarceration. Section 706-624 states:

**§706-624 Conditions of suspension of sentence or probation.** (1) When the court suspends the imposition of sentence on a person who has been convicted of a crime or sentences him to be placed on probation, it shall attach such reasonable conditions, authorized by this section, as it deems necessary to insure that he will lead a law-abiding life or likely to assist him to do so.

(2) The court, as a condition of its order, may require the defendant:

- (a) To meet his family responsibilities;
- (b) To devote himself to an employment or occupation;
- (c) To undergo available medical or psychiatric treatment and to enter and remain in a specified institution, when required for that purpose;
- (d) To pursue a prescribed secular course of study or vocational training;

- (e) To attend or reside in a facility established for the instruction, recreation or residence or persons on probation;
  - (f) To refrain from frequenting unlawful or disreputable places or consorting with disreputable persons;
  - (g) To refrain from entering specified geographical areas without the court's permission;
  - (h) To have in his possession no firearms or other dangerous instruments unless granted written permission by the court;
  - (i) To make restitution of the fruits of his crimes or to make reparation, in an amount he can afford to pay, for the loss or damage caused thereby;
  - (j) To remain within the jurisdiction of the court and to notify the court or the probation officer of any change in his address or his employment;
  - (k) To report as directed to the court or the probation officer and to permit the officer to visit his home;
  - (l) To post a bond, with or without surety, conditioned on the performance of any of the foregoing obligations;
  - (m) To satisfy any other conditions reasonably related to the rehabilitation of the defendant and not unduly restrictive of his liberty or incompatible with his freedom or conscience.
- (3) When the court sentences a person who has been convicted of a misdemeanor to be placed on probation, it may require him to serve a term of imprisonment not exceeding six months as an additional condition of its order. When the court sentences a person who has been convicted of a felony to be placed on probation, it may require him to serve a term of imprisonment not exceeding one year as an additional condition of its order. The court may order that the term of imprisonment be served intermittently.
- (4) The defendant shall be given a written copy of any requirements imposed pursuant to this section, stated with sufficient specificity to enable him to guide himself accordingly.

Act 314 amended this section of the law by adding mandatory conditions. Some of the mandatory conditions were



listed in subsection (2) of the pre-1986 law.<sup>11</sup> Subsection (1) now reads:

(1) Mandatory conditions. The court shall provide, as an explicit condition of a sentence of probation:

- (a) That the defendant not commit another federal or state crime during the term of probation;
- (b) That the defendant report to a probation officer as directed by the court or the probation officer;
- (c) That the defendant remain within the jurisdiction of the court, unless granted permission to leave by the court or a probation officer;
- (d) That the defendant notify a probation officer prior to any change in address or employment;
- (e) That the defendant notify a probation officer promptly if arrested or questioned by a law enforcement officer; and
- (f) That the defendant permit a probation officer to visit the defendant at the defendant's home or elsewhere as specified by the court.

Subsection (2) now contains a revised list of additional or discretionary conditions that the court may provide as further conditions of probation. This list includes imprisonment, community service work, fines, restitution, refraining from the use of alcohol, or drugs without a prescription, and many other previously stated conditions.<sup>12</sup>

Many of the discretionary conditions were imposed on the probationers in this study; however, only imprisonment was tracked for this report.

#### Revocation and Resentencing

Section 706-625 concerns the revocation of probation.<sup>13</sup> The court, on application of a probation officer, prosecuting

attorney, defendant, or on its own motion, after a hearing, may revoke probation, or modify or add to the conditions previously imposed. In current practice, the probation officer will notify the prosecuting attorney that probation should be revoked for a given individual. The prosecuting attorney will file a motion in court for revocation and resentencing. The prosecuting attorney is considered the movant and the probation officer is the affiant.

The court may revoke probation if the defendant has failed to comply with the conditions imposed on his probation or has been convicted of another crime. When the court revokes probation, it may impose on the defendant any sentence that may have been imposed originally for the crime of which he was convicted. Prior to April 1986, that included a new term of probation. In 1986, the Intermediate Court of Appeals decided in *State v. Kala*, Supreme Court No. 10778, 6 Haw. App. \_\_\_, that a defendant could not be sentenced to a new term of probation. The decision in *Kala* may have affected some of the resentencing recorded in this study.

In November 1987, the Supreme Court in its decision in the *State v. Gamulo*, Supreme Court No. 11935, 69 Haw. \_\_\_, said that a new term of probation was permissible. This decision did not affect the study as the cut off date was July 1, 1987.

The defendant, while on probation, may be arrested without a warrant if there is probable cause that the defendant has failed to satisfy any condition of his probation. He may be

held without bail if there is probable cause to believe that the defendant has committed another crime.<sup>14</sup>

During the process of revocation, the court may extend a probationers termination date by a tolled period. A period of tolling begins upon filing of a motion to revoke probation and continues until the filing date of the written decision of the court concerning the motion. If the court orders tolling, the tolled period is added to the probationers term and a new expiration date is computed.<sup>15</sup> Periods of tolling were not recorded for this study.

#### Multiple Dispositions

Section 706-629 deals with multiple dispositions involving probation and imprisonment or multiple terms of probation. This law reflects a preference for concurrent sentences.<sup>16</sup> For example, subsection (1)(b) states that multiple periods of probation shall run concurrently from the date of the first such disposition. Subsection (2)(a) states that if the defendant is sentenced to imprisonment for an indeterminate term while on probation and that probation has not been revoked, the service of the imprisonment shall satisfy the sentence to probation.

#### Termination of Probation

Section 706-630 states that upon the termination of the period of probation or the earlier discharge of the defendant,

the defendant shall be relieved of any obligations imposed by the order of the court and shall have satisfied the disposition of the court. A formal discharge is not required upon termination of the statutory period of probation.

#### METHOD

A random sample of 340 offenders was selected from a list of people sentenced to probation under the supervision of the APD. The list contained the names of 2,624 offenders and was obtained from the HCJDC's Supervision File. Although the supervision file is maintained by the HCJDC, the data are entered by the supervising agencies (such as APD.) The list used was dated, March 1, 1985.

Offender demographic and criminal activity data were collected from the HCJDC's Offender-Based Transaction Statistics/Computerized Criminal History (OBTS/CCH) system, APD files, and circuit court records from Legal Documents. The data was used to build a profile of the offender and in identifying factors that may be important in predicting future criminal activity.

#### Adjustments To The Sample

The 340 offenders were examined to see if they truly belonged in the sample. On any given day, an offender may be actively on probation, have been terminated from probation, or in the revocation/resentencing process. The offenders in the

sample were categorized according to those dispositions and Table 1 shows the outcome.

TABLE 1  
DISPOSITION ON MARCH 1, 1985

<u>Disposition</u>	<u>Number</u>	<u>Percent</u>
Motion for revocation/resentence filed prior to 3/1/85; resentenced after 3/1/85	8	2.3
Motion for revocation/resentence filed prior to 3/1/85; resentenced to prison prior to 3/1/85	7	2.1
Motion for revocation/resentence filed prior to 3/1/85; bench warrant issued but still outstanding	14	4.1
Active on 3/1/85; no prior motions for revocation/resentenced filed; motion was filed but denied; or resentenced to probation prior to 3/1/85	296	87.1
Probation terminated (statutory term fulfilled) prior to 3/1/85	12	3.5
Other	3	0.9
TOTAL	340	100.0

The "other" category included an offender who appealed his conviction. The appeals court reversed the conviction in the latter part of 1985 and remanded the case to the trial court. The prosecuting attorney filed a motion for nolle prosequi and the case was later dismissed. This offender was removed from the sample.

Deferred plea cases are also included in the "other" category. Those cases involve offenders who had their motions

for either a Deferred Acceptance of Guilty Plea (DAGP) or a Deferred Acceptance of No Contest Plea (DANCP), granted. When a motion for a deferred guilty plea is granted, the court literally defers further proceedings for a set period of time. During that time, the court may place the defendant under supervision of an agency such as APD and may impose conditions on the defendant such as those imposed on probationers. If the defendant completes the set period in compliance with the terms set by the court, the defendant is discharged and the charges dismissed. Since this study intended to look strictly at probationers, deferred plea defendants were also removed from the sample.<sup>17</sup>

There were 12 offenders in this study whose probation terminated before March 1, 1985. These offenders had served their probation period and were not actively on probation. These people were removed from the sample.

There were 7 offenders who had their probation revoked and were resentenced to prison prior to the March 1, 1985 study date. These offenders were also removed from the sample.

There were offenders in the sample who had their probation revoked and were resentenced to a new term of probation prior to March 1, 1985. These people were kept in the sample, and the resentence date taken as the date of probation.

The sample, after adjustments were made, consisted of 318 people.

## Revised Sample

For this report, four categories of probationers were created. (See Table 2.) Regular is a person sentenced to probation in the first circuit and remains in the first circuit. Intrastate involves cases where a person has been sentenced in the first circuit but moves to another circuit within the state, or has been sentenced in another circuit but moves to the first circuit. Courtesy supervision agreements have been made among the circuits. Courtesy compact (CC) cases involve the movement of probationers to and from Hawaii under the Interstate Parole and Probation Compact.<sup>18</sup> For these cases, the receiving state provides supervision over the probationers under the standards provided for its own probationers. Non-CC cases involve the movement of probationers from Hawaii but not under the Interstate compact because they do not meet the criteria set forth in the compact. Supervision for these cases is provided by APD.

TABLE 2  
CATEGORIES OF PROBATIONERS

<u>Category</u>	<u>Number</u>	<u>Percent</u>
Regular	271	85.2
Intrastate	11	3.5
CC - (From/To Hawaii)	26	8.2
Non-CC - (From Hawaii)	10	3.1
 TOTAL	 318	 100.0

## OFFENDER AND PROBATION DATA

Table 3 presents offender background data. Approximately one-half (50.6 percent) of the 318 offenders were 25 years of age or younger at the time of sentencing. Most were male (82.7 percent). Two ethnic groups comprised about three-fifths of the offenders. They are the Hawaiians/Part-Hawaiian with 32.7 percent and Caucasian with 28.0 percent. No other group was represented by more than 8 percent. A little over one-half (54.1 percent) of the offenders were born in Hawaii. Of the remainder, the majority were born in other states. Of foreign countries, more of the offenders were born in the Philippines than any other foreign country.

About three-fifths of the Samoan offenders were born in American Samoa. A little more than one-half of the Filipino offenders were born in the Philippines. (See Table 4.)

TABLE 3  
OFFENDER DEMOGRAPHICS

<u>Variable</u>	<u>Number</u>	<u>Percent</u>
Age:		
18-20	58	18.2
21-25	103	32.4
26-30	56	17.6
31-35	38	11.9
36-40	27	8.5
41-45	18	5.7
46-50	9	2.8
51 & over	9	2.8
TOTAL	318	99.9



TABLE 3 (Cont.)  
OFFENDER DEMOGRAPHICS

Sex:		
Male	263	82.7
Female	55	17.3
TOTAL	318	100.0
Race:		
Hawaiian	104	32.7
Caucasian	89	28.0
Samoan	22	6.9
Filipino	24	7.5
Black	25	7.9
Japanese	23	7.2
Chinese	5	1.6
Korean	4	1.3
Other or Not Available	22	6.9
TOTAL	318	100.0
Place of Birth:		
Hawaii	172	54.1
Other States	76	23.9
American Samoa	13	4.1
Philippines	15	4.7
Other	9	2.8
Not Available	33	10.4
TOTAL	318	100.0

Note: Percentages may not add to 100.0 due to rounding.

TABLE 4  
RACE BY PLACE OF BIRTH

Race Group	Place of Birth						TOTAL
	Hawaii	Calif.	Philip- pines	Amer. Samoa	Other	Not Avail.	
Hawaiians	97	2	0	0	2	3	104
Caucasian	23	14	0	0	36	16	89
Samoan	3	1	0	13	1	4	22
Filipino	9	0	13	0	0	2	24
Black	0	4	0	0	19	2	25
Japanese	21	0	0	0	0	2	23
All Others	19	1	2	0	5	4	31
TOTAL	172	22	15	13	63	33	318

## PROBATION

The statistics presented in this section relate to the probation term being studied.

### Charge

Most of the offenders in this study are felons, although there are a few misdemeanants. The APD will supervise misdemeanants convicted in Circuit Court. Misdemeanants convicted in District Court are supervised by the District Court Counseling Service. Charge severity is shown in Table 5. A little over 95 percent of the offenders in the sample were convicted of felonies.

TABLE 5  
CONVICTION CHARGE SEVERITY

<u>Severity</u>	<u>Number</u>	<u>Percent</u>
Misdemeanor	8	2.5
Felony		
Class A	7	2.2
Class B	88	27.7
Class C	208	65.4
Unknown	7	2.2
TOTAL	318	100.0

Table 6 presents the most serious conviction charge. In cases where the offender was convicted on multiple charges, the most serious charge was selected by a hierarchy rule. Felonies were selected over misdemeanors. A class A felony would be selected over a class B felony and so forth. If two offenses

fall within the same severity class, then the personal or violent crime was selected over the property crime. The single most frequent conviction charge was HRS 708-831 (Theft I).<sup>19</sup>

TABLE 6  
MOST SERIOUS CONVICTION CHARGE

<u>Charge Group</u>	<u>Number</u>	<u>Percent</u>
<u>Hawaii Statutes:</u>		
Homicide <sup>a</sup>	4	1.3
Sex offenses <sup>b</sup>	10	3.1
Robbery	25	7.9
Assaults <sup>c</sup>	24	7.5
Kidnapping/Unlaw. Imprison.	4	1.3
Theft	103	32.4
Burglary	43	13.5
Forgery/Fraud	19	6.0
Motor vehicle theft	11	3.5
Trespass/Property damage	5	1.6
Drug related <sup>d</sup>	39	12.3
Firearm violations	7	2.2
Traffic violations	3	0.9
Failure to render aid	2	0.6
Escape/Prison contraband	5	1.6
Other	7	2.2
<u>Other States Statutes:</u>		
Burglary	2	0.6
Motor vehicle theft	2	0.6
Theft	1	0.3
Stolen property	1	0.3
Robbery	1	0.3
TOTAL	318	100.0

Notes:

- <sup>a</sup> Includes attempted murder, manslaughter, and negligent homicide.
- <sup>b</sup> Includes rape, sodomy, sex abuse, and incest.
- <sup>c</sup> Includes terroristic threatening and reckless endangering.
- <sup>d</sup> Includes control substance offenses.

The majority of offenders were charged with only one offense in the trial that led to the sentence of probation. A little more than three-fourths (75.5 percent) were convicted of one charge.

TABLE 7  
MULTIPLE CHARGES AND CONVICTIONS

<u>Counts</u>	<u>Number</u>	<u>Percent</u>
Number of Charges at Trial:		
1	193	60.7
More than 1	115	36.2
Total is unknown	10	3.1
TOTAL	318	100.0
Number of Conviction Charges:		
1	240	75.5
More than 1	68	21.4
Total is unknown	10	3.1
TOTAL	318	100.0

#### Term

The majority of the offenders, having been convicted of a felony, were sentenced to a term of five years. Terms other than 1 or 5 years are periods set by other states for their probationers. One year terms in Hawaii are for misdemeanants.

TABLE 8  
LENGTH OF PROBATION

<u>Years</u>	<u>Number</u>	<u>Percent</u>
1	8	2.5
2	1	0.3
3	4	1.3
5	305	95.9
TOTAL	318	100.0

Of the 318 offenders, a little less than one-half, 41.2 percent, received a jail term as a condition of probation. The terms ranged from 1 day to 1 year. An offender convicted of a misdemeanor and sentenced to probation may be given a jail term of up to 6 months. A convicted felon may get up to 1 year imprisonment accompanying the probation.

TABLE 9  
CONFINEMENT TIME

<u>Confinement Time</u>	<u>Number</u>	<u>Percent</u>
Yes	131	41.2
No	187	58.8
TOTAL	318	100.0

<u>Length of Confinement in Days</u>	<u>Number</u>	<u>Percent of Offenders Receiving Jail</u>
1 - 30 (1 month)	46	35.1
31 - 60 (2 months)	12	9.2
61 - 90 (3 months)	10	7.6
91 - 180 (6 months)	28	21.4
181 - 365 (1 year)	35	26.7
TOTAL	131	100.0

## Prior Criminal Activity

Adult criminal history information were recorded only up to the arrest date of the charge for which the offender was eventually convicted and sentenced to the probation term in this study.<sup>20</sup> Individual charges, not incidents, were counted. Prior arrests and convictions charges were captured in summary form only. Bail forfeiture was considered a conviction for purposes of this study. Criminal histories for offenders from the mainland serving their time in Hawaii were not available.

Table 10 shows that most of the offenders had at least one prior arrest. However, a slight majority did not have any prior convictions.

TABLE 10  
PRIOR ARRESTS AND CONVICTIONS

<u>Number of Charges</u>	<u>Number</u>	<u>Percent<sup>a</sup></u>
Prior Arrests:		
0 <sup>b</sup>	114	35.8
1	43	13.5
2	29	9.1
3	26	8.2
4 - 5	31	9.2
6 - 10	37	11.6
Over 10	38	11.9
<hr/> TOTAL	318	99.8

Notes: Notes are at the end of the table.

TABLE 10 (Continued)  
PRIOR ARRESTS AND CONVICTIONS

<u>Number of Charges</u>	<u>Number</u>	<u>Percent<sup>a</sup></u>
Prior Convictions:		
0 <sup>b</sup>	171	53.8
1	40	12.6
2	32	10.1
3	21	6.6
4 - 5	21	6.6
6 - 10	21	6.6
Over 10	12	3.8
TOTAL	318	100.1

Notes:

<sup>a</sup> Percentages may not add to 100.0 due to rounding.

<sup>b</sup> Includes offenders whose criminal histories were not available. These offenders were sentenced in other states.

A little over 10 percent of the offenders were previously sentenced to probation (a term unrelated to the term in this study.)

TABLE 11  
PRIOR PROBATION

<u>Prior Probation</u>	<u>Number</u>	<u>Percent</u>
Yes	38	11.9
No	273	85.8
Unknown	7	2.2
TOTAL	318	99.9

## REARREST INFORMATION

In this study, rearrests were recorded from the date the offender was placed on probation to June 30, 1987.<sup>21</sup> This also pertains to offenders from the mainland.

A little less than half of the 318 offenders, 49.4 percent were rearrested while on probation. These include arrests for specific offenses, contempt of court arrests, and arrests in connection with revocation or extradition proceedings. Almost the same amount, 48.4 percent, were never rearrested. Seven offenders, 2.2 percent, were rearrested, but only after their probation term expired.

TABLE 12  
REARRESTS

<u>Rearrested</u>	<u>Number</u>	<u>Percent</u>
No rearrests	154	48.4
While on probation	157	49.4
Only after probation	7	2.2
TOTAL	318	100.0

Since the number of offenders whose first rearrest occurred after probation expired is very small, for most rearrest tables in this section, they are combined with the group of offenders arrested while serving probation.<sup>22</sup> Altogether, 164 offenders, or 51.4 percent, were rearrested at least once after being sentenced to probation.



## Elapsed Time

The time elapsed was measured from the date the offender was placed on probation to the date the offender was arrested for committing a crime. If an offender's first rearrest was in connection with revocation or extradition proceedings, that date was recorded only if the offender had no other arrests for crimes committed. Of the 164 offenders rearrested, almost one-half, 49.4 percent, were first arrested within one year of being placed on probation. The majority, 76.2 percent, were rearrested within two years.<sup>23</sup>

TABLE 13  
TIME FROM SENTENCING TO FIRST REARREST

<u>Time (Days)</u>	<u>Number</u>	<u>Percent</u>
1 - 30 (1 month)	15	9.1
31 - 90 (3 months)	16	9.8
91 - 180 (6 months)	22	13.4
181 - 365 (1 year)	28	17.1
366 - 730 (2 years)	44	26.8
731 - 1825 (5 years)	34	20.7
Over 1825	5	3.0
TOTAL	164	99.9

## Rearrest Charges

The top three rearrest charges were contempt of court, driving under the influence of alcohol (DUI), and theft. Alcohol related offenses including DUI, and drug related offenses accounted for 34 or 20.7 percent of the 164 charges. Arrests for non-offenses were included only if the offender had no other arrest charges.

Of those rearrested, the majority, 62.2 percent, were first rearrested for committing a misdemeanor offense. Of the misdemeanors, contempt of court charges were the most numerous.<sup>24</sup> All classes of felonies accounted for 17.7 percent. Class A and Class B felonies accounted for only 1.2 percent and 4.9 percent, respectively.

TABLE 14  
FIRST REARREST CHARGE

<u>Charge<sup>a</sup></u>	<u>Number</u>	<u>Percent</u>
Homicide	1	0.6
Robbery	2	1.2
Assault <sup>b</sup>	10	6.1
Burglary	3	1.8
Theft	19	11.6
Motor Vehicle Theft	3	1.8
Drug related	7	4.3
DUI	21	12.8
Alcohol related	6	3.7
Weapon law offenses	2	1.2
Traffic related	8	4.9
Criminal trespass	3	1.8
Contempt of court	61	37.2
Disorderly conduct	3	1.8
Other offenses	10	6.1
Non-offenses <sup>c</sup>	5	3.0
<u>TOTAL<sup>d</sup></u>	164	99.9

Notes:

<sup>a</sup> If an offender was arrested on multiple charges during his first arrest, the most serious charge was selected.

<sup>b</sup> Includes terroristic threatening.

<sup>c</sup> Includes arrests in connection with revocation and extradition proceedings.

<sup>d</sup> Percentage total may not add to 100.0 due to rounding.

TABLE 15  
FIRST REARREST CHARGE SEVERITY

<u>Charge Severity</u>	<u>Number</u>	<u>Percent</u>
Felony		
Class A	2	1.2
Class B	8	4.9
Class C	19	11.6
Misdemeanor	102	62.2
Petty Misdemeanor	25	15.2
Violation	3	1.8
<u>TOTAL</u>	<u>164</u>	<u>99.9</u>

Note: Percentages may not add to 100.0 due to rounding.

For many offenders, 103, the first arrest was not the last. Since these offenders were rearrested on more than one occasion, their first rearrest charge may not have been the most serious. Tables 16 and 17 look at all the rearrest charges of an offender and presents the most serious charge. (For offenders with only one rearrest, the first rearrest charge will be the most serious.) Table 16 shows that contempt of court, DUI, and theft charges dominate the list of offenses. No one in the sample was rearrested for a sex offense. Table 17 shows that misdemeanors and lesser crimes made up a large portion of the rearrest charges, 63.4 percent.

TABLE 16  
MOST SERIOUS REARREST CHARGE

<u>Charge</u>	<u>Number</u>	<u>Percent</u>
Homicide	1	0.6
Robbery	10	6.1
Assault <sup>a</sup>	9	5.5
Burglary	6	3.7
Theft	19	11.6
Motor Vehicle Theft	5	3.0
Drug related	13	7.9
DUI <sup>b</sup>	30	18.3
Alcohol related	3	1.8
Weapon law offenses	2	1.2
Traffic related	5	3.0
Criminal trespass/damage	4	2.4
Contempt of court	41	25.0
Prison contraband	4	2.4
Other offenses	7	4.3
Non-offenses <sup>c</sup>	5	3.0
TOTAL <sup>d</sup>	164	99.8

Notes:

<sup>a</sup> Includes terroristic threatening.

<sup>b</sup> One case involved drugs.

<sup>c</sup> Arrests in connection with revocation and extradition proceedings.

<sup>d</sup> Percentage total may not add to 100.0 due to rounding.

TABLE 17  
MOST SERIOUS REARREST CHARGE SEVERITY

<u>Charge Severity</u>	<u>Number</u>	<u>Percent</u>
Felony		
Class A	6	3.7
Class B	18	11.0
Class C	31	18.9
Misdemeanor	92	56.1
Petty Misdemeanor	10	6.1
Violation	2	1.2
TOTAL	164	100.0

Table 18 shows that of the rearrested offenders, three-fourths, or 122, had more than one rearrest charge. Twenty-one (21) offenders had more than 10 rearrest charges.

Table 19 shows that of the 164 rearrest offenders, 121, or 73.8 percent, were convicted on at least one charge. Of the 121 convicted offenders, one-fourth, or 25.6 percent, were convicted on 4 or more charges.

TABLE 18  
NUMBER OF REARREST CHARGES

<u>Number of Charges</u>	<u>Number</u>	<u>Percent</u>
1	42	25.6
2	31	18.9
3	15	9.1
4 - 5	23	14.0
6 - 10	32	19.5
Over 10	21	12.8
TOTAL	164	99.9

Note: Percentages may not add to 100.0 due to rounding.

TABLE 19  
NUMBER OF REARREST CHARGES RESULTING  
IN CONVICTIONS

<u>Number of Charges</u>	<u>Number of Offenders</u>	<u>Percent</u>
1	47	38.8
2	24	19.8
3	19	15.7
4 - 5	16	13.2
6 - 10	10	8.3
Over 10	5	4.1
TOTAL	121	99.9

Note: Percentages may not add to 100.0 due to rounding.

For the 121 convicted offenders, Tables 20 and 21 lists the most serious conviction charge and charge severity, respectively. Most offenders were convicted for misdemeanors. Drunk driving and contempt of court made up almost 80 percent of the misdemeanor category. Only 20 offenders were convicted on felony charges; no one was convicted for a class A felony. Theft I (HRS 708-0831) accounted for 9 of the 14 class C felonies.

TABLE 20  
MOST SERIOUS CONVICTION CHARGE

<u>Charge</u>	<u>Number</u>	<u>Percent<sup>a</sup></u>
Robbery	3	2.5
Assault	2	1.7
Burglary	2	1.7
Theft	15	12.4
Motor Vehicle Theft	2	1.7
Drug related	7	5.8
DUI <sup>b</sup>	26	21.5
Alcohol related	4	3.3
Forgery/Fraud	2	1.7
Traffic related	7	5.8
Contempt of court	42	34.7
Disorderly conduct/Harassment	4	3.3
Other offenses	5	4.1
TOTAL	121	100.2

Notes:

<sup>a</sup> Percentages may not add to 100.0 due to rounding.

<sup>b</sup> One case involved drugs.

TABLE 21  
MOST SERIOUS CONVICTION CHARGE SEVERITY

<u>Charge Severity</u>	<u>Number</u>	<u>Percent</u>
Felony		
Class A	0	0.0
Class B	6	5.0
Class C	14	11.6
Misdemeanor	84	69.4
Petty Misdemeanor	15	12.4
Violation	2	1.7
<b>TOTAL</b>	<b>121</b>	<b>100.1</b>

Note: Percentages may not add to 100.0 due to rounding.

#### Revocation and Resentencing

A motion for revocation and resentencing were filed against 64, or 20.1 percent, of the 318 offenders. (See Table 22.) Of the 64, only in one case was the motion denied. For the majority of the offenders, 57.8 percent, the motion was granted and the offenders were resentenced. Twenty-six (26), or 40.6 percent, were not apprehended as of July 1, 1987. (See Table 23.)

Table 24 shows that of the 37 offenders who were resentenced, 6 received new probation terms, 2 were resentenced to probation nunc pro tunc, 4 received a new probation term plus some jail time, and 5 had their probation conditions modified. Eighteen (18) offenders were resentenced to prison. Two (2) offenders were fined.

TABLE 22  
MOTION FOR REVOCATION AND RESENTENCING  
ALL OFFENDERS

<u>Motion Filed</u>	<u>Number</u>	<u>Percent</u>
Yes	64	20.1
No	254	79.1
TOTAL	318	100.0

TABLE 23  
OUTCOME OF REVOCATION HEARING

<u>Outcome</u>	<u>Number</u>	<u>Percent</u>
Motion denied	1	1.7
Offender resentenced	37	57.8
Pending, bench warrant outstanding	26	40.6
TOTAL	64	100.1

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Note: Percentages may not add to 100.0 due to rounding.

TABLE 24  
RESENTENCING

<u>Resentence</u>	<u>Number</u>	<u>Percent</u>
New probation sentence	6	16.2
New probation and jail	4	10.8
Modified old conditions	5	13.5
Probation - nunc pro tunc (some conditions modified)	2	5.4
Prison	18	48.6
Fine	2	5.4
TOTAL	37	99.9

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Note: Percentages may not add to 100.0 due to rounding.



## Current Status

The offenders in this study were tracked until July 1, 1987. Table 25 list the last known status of the offenders at that time. The majority were still on probation when data collection ended.

TABLE 25  
STATUS AT END OF STUDY

<u>Status</u>	<u>Number</u>	<u>Percent</u>
Probation <sup>a</sup>	175	55.0
Incarcerated	18	5.7
Bench warrant of arrest still outstanding	27	8.5
Abscond	3	0.9
Term Expired	92	28.9
Died	1	0.3
Other	2	0.6
<u>TOTAL<sup>b</sup></u>	318	99.9

Notes:

<sup>a</sup> Includes resentence to probation with some jail time.

<sup>b</sup> Percentages may not add to 100.0 due to rounding.

## REARREST RELATIONSHIPS

This section looks at various variables and examines their relationship with rearrests. Chi-square ( $X^2$ ) was the statistical test used to find relationships between qualitative variables such as sex and rearrests. Chi-square was also used to test quantitative variables that could be logically collapsed into a few categories.<sup>25</sup> For example, age was divided into "25 and younger" and "26 and older". The level of significance was set at  $p \leq 0.05$ , and missing data were excluded.<sup>26</sup>

Age at sentencing was found to have a significant relationship with rearrests. Those in the younger age groups (25 and younger) are more likely to be rearrested than older offenders ( $X^2=13.662$   $p < 0.01$ ). This can be confirmed by expanding the two age categories. Table 26 presents rearrest rates by age group. With the exception of the group "46 and over", the percentage of rearrests decreases as age increases.

TABLE 26  
AGE AND REARRESTS

<u>Age Group</u>	<u>Total</u>	<u>Number Rearrested</u>	<u>Percent Rearrested</u>
18 - 20	58	40	70.0
21 - 25	103	60	58.3
26 - 30	56	32	57.1
31 - 35	38	18	47.4
36 - 40	27	6	22.2
41 - 45	18	2	11.1
46 & Over	18	6	33.3
TOTAL	318	164	51.6

The average age of those rearrested was 25.6 years. The average age of those not rearrested was 30.9 years.<sup>27</sup>

Place of birth also seemed to be associated with rearrests. Offenders born in Hawaii were more likely to be rearrested than offenders born elsewhere ( $X^2=4.865$   $p<0.05$ ).

Sex of offender had no statistical effect on rearrests. Although a higher percentage of males were rearrested, 53.2 percent of the male offenders were rearrested as compared to 43.6 percent of the females, females were statistically as likely to be rearrested as males ( $X^2=1.315$   $p>0.05$ ).

Race also seemed to have no effect on rearrests. The race categories were collapsed into 3 groups, Hawaiian, Caucasian and all others. Offenders in the Hawaiian ancestry group were rearrested at a slightly higher rate than the Caucasian or other race groups, however the difference was not significant ( $X^2=3.464$   $p>0.05$ ).

Prior criminal history was a significant factor in rearrests. Offenders with at least 1 prior arrest charge were more likely to be rearrested than those with no prior charges ( $X^2=18.320$   $p<0.01$ ). Rearrested offenders had on the average 5.4 prior arrest charges while other offenders had a average of 2.6

Similarly, offenders with at least 1 prior conviction were more likely to be rearrested than those with none ( $X^2=21.680$   $p<0.01$ ). Rearrested offenders had an average of 4.4 prior arrest charges resulting in conviction, while those not

rearrested had an average of 2.7.

The prior probation variable was also significant. Offenders who had at least one previous sentence of probation (not related to the probation sentence under study) were slightly more likely to be rearrested than first time probationers ( $X^2=3.911$   $p<0.05$ ).

Confinement time as a condition of probation was not found to be related to rearrests. Offenders who were given some jail time in addition to probation were slightly more likely to be rearrested than offenders given probation without jail; however, the relationship was not significant ( $X^2=1.834$   $p>0.05$ ).

Also not significantly related to rearrests were the variables for multiple charges and convictions.

Since so many of the offenders were convicted on charges of theft, theft offenders were compared with offenders arrested for other offenses. Although theft offenders were rearrested at a higher rate than non-theft offenders, the difference was not significant ( $X^2=1.665$   $p>0.05$ ).

Table 27 shows that offenders sentenced in the first circuit who remain in the first circuit are rearrested more frequently than other categories of offenders. Rearrest data were collected only while an offender was in the state. No data were collected while an offender was away from Hawaii.

TABLE 27  
REARRESTS BY CATEGORY OF PROBATIONER

<u>Category</u>	<u>Total</u>	<u>Number Rearrested</u>	<u>Percent Rearrested</u>
Regular	271	149	55.0
Intrastate	11	2	18.2
CC - (From/To Hawaii)	26	9	34.6
Non-CC - (From Hawaii)	10	4	40.0
TOTAL	318	164	51.6

## RECIDIVISM RATES

This section presents various recidivism rates (rate per 100 offenders.) The bases used to compute the rates are listed below:

<u>Base</u>	<u>Number</u>
All offenders	318
Offenders rearrested	164
Offenders convicted	121

If not stated, the base used was the total number of offenders (all offenders.)

<u>Statistic</u>	<u>Rate Per 100</u>
Rearrested while on probation	49.4
All offenders rearrested (including those arrested only after probation was terminated)	51.6
Rearrested for crimes other than contempt of court, traffic violations, and non-offenses	35.5
Rearrested for a felony:	
Of all offenders	17.3
Of offenders rearrested	33.5
Rearrested within 1 year:	
Of all offenders	25.5
Of offenders rearrested	49.4
Rearrested within 2 years:	
Of all offenders	39.3
Of offenders rearrested	76.2
New convictions	
Of all offenders	38.1
Of offenders rearrested	73.8

<u>Statistic</u>	<u>Rate</u> <u>Per 100</u>
New conviction for a felony:	
Of all offenders	6.3
Of offenders convicted	16.5
Motion for revocation filed	20.1
Offenders resentenced	11.6
Offenders resentenced to prison	5.7

## SUMMARY AND DISCUSSION

The majority of probationers, based on a random sample of 318 offenders, can be characterized as male, under 30 years of age, born in Hawaii, and of Caucasian or Hawaiian ancestry. The majority were felons convicted of a class C felony. Theft was the single most common conviction charge.

Of the 318 offenders, 273, or 85.8 percent, were first time probationers. Despite this fact, 204 offenders, or 64.2 percent, had at least one prior arrest. Almost half, 46.2 percent, had at least one prior conviction.

Almost half of the probationers may be expected to be rearrested at least once during the probation term. In this study, 157 offenders, or 49.4 percent, were rearrested while on probation, and 7 were rearrested after the probation period was terminated.

Rearrests included arrests for contempt of court, the most common rearrest charge, and traffic violations. Only 55, or 17.3 percent of all offenders, were rearrested for committing a felony offense. Of those rearrested, drug related and alcohol related offenses including driving under the influence of alcohol, accounted for 46 of the 164 rearrest offenses. It should be noted that no one in the sample was rearrested for a sex offense. Of those rearrested, 125, or 76.2 percent, were rearrested within two years.

Almost two-fifths, 38.1 percent of all offenders, were



convicted at least once after being placed on probation. Of those convicted, 16.5 percent were convicted for felony offenses.

The variables or factors highly associated with rearrests were age at sentencing and prior criminal history. Offenders 25 years and younger are more likely to be rearrested than older offenders. Offenders with at least one prior arrest are also more likely to be rearrested as are those with at least one prior conviction. Offenders who had previously been sentenced to probation were slightly more likely to be rearrested than first-time probationers.

The sex and race variables showed no statistical effect upon rearrests. The same was true for confinement time. If the confinement time given to probationers is used as a deterrent for future crimes, it may not be effective. Offenders who were given confinement time as a condition of probation were statistically as likely to be rearrested as those given probation without confinement time.

#### Areas of Further Concern

Some areas that should be examined further are listed below.

- ° Oftentimes the focus of rearrests is on felony crimes. However, the majority of the rearrests and convictions in this study was for misdemeanor

offenses. More attention should be given to this area.

- The first two years of a probation term seems especially critical. Most of the rearrests occurred within two years of being placed on probation. More intensive supervision may be needed during this period. In any event, this area also needs a closer examination.
- Alcohol related offenses, including driving under the influence, seems to be a problem for probationers. Alcohol abuse needs to be monitored as well as drug abuse.

In late 1985, the APD implemented a new case management system. It would be beneficial to APD to conduct a new recidivism study that can be compared with this study.

## NOTES

1. Byrne, James M., Probation, U.S. Department of Justice, National Institute of Justice Crime File Study Guide. Washington, D.C.
2. A State Intake Service Center report entitled, "Profile of Facility Populations Calendar Years 1986," shows that about 1,100 felons, misdemeanants, and petty misdemeanants were sentenced to prison or jail. The Judiciary's "Annual Report - July 1, 1985 to June 30, 1986 - Statistical Supplement" shows that adult probation departments throughout the state recorded 1,619 new placements.
3. Figures from the Adult Probation Division of the First Circuit Court.
4. The figures in this paragraph were provided by APD. Also note that in 1988 there were approximately 2,300 offenders incarcerated statewide.
5. See also:  
Hawaii Criminal Justice Data Center, Report on Arrests During Probation, Research and Statistics Report # SP01, May 1986.
6. The terms offender and probationer are often used interchangeably in this report.
7. Chapter 706 is entitled, "Disposition of Convicted Defendants" and is part of TITLE 37 - Hawaii Penal Code. Part II of Chapter 706 deals with probation.
8. Pre-1986 laws are taken from the Hawaii Revised Statutes, Volume 12, 1985 Replacement. Probation laws prior to the 1986 amendments includes suspension of sentence. Most of the references to suspended sentences have been deleted from this section of the report.
9. HRS §706-622 (1985). Act 314 eliminates reference to the "need for supervision." For convicted felons, probation is the alternative to imprisonment.
10. Act 314 (1986) amended the law to give the prosecutor an opportunity to be heard prior to an early discharge.

11. Many of the mandatory conditions, though not explicitly stated in the law prior to 1986, were conditions placed on the defendants in this study.
12. Act 314 (1986) deleted subsection (3) from § 706-624 and placed imprisonment as a discretionary condition. The period of imprisonment did not change. Act 262 (1987) added home detention as a discretionary condition.
13. Prior to 1985, HRS section 706-625 dealt solely with modification of conditions of probation and 706-728 dealt with revocation. Act 192 (1985) repealed section 706-628 and amended 706-625 to include revocation. However, some of the defendants in this study were arrested in connection with 706-628.
14. HRS section 706-626 (1985).
15. The time already served plus the tolling period cannot exceed the original term.
16. HRS section 706-629 (1985) commentary.
17. The supervision file has separate listings for probationers and deferred plea defendants. For this report, the Data Center intended to look only at probationers.
18. Hawaii Revised Statutes (HRS) sections 353-81 and 353-82.
19. HRS 708-831 was theft I prior to the 1986 amendments.
20. If an offender was arrested, released pending investigation, indicted, then rearrested on a bench warrant, the date the bench warrant was executed was recorded as the arrest date. Where the arrest date was not available, the indictment date was substituted.
21. This differs from the previous study where rearrests were recorded from March 1, 1985 and not from the date of sentencing.
22. It is difficult to compare those arrested after probation expired with those arrested while on probation because of the small number in the former group. However, the results of significance testing using the group of offenders rearrested while on probation versus the no-rearrests group were similar

to the results using the group of all rearrested offenders versus the no-rearrest group.

23. Of the seven offenders first rearrested after their probation term expired, 1 was arrested between 1 and 2 years after sentencing, 2 were arrested between 2 and 5 years, and 4 were arrested more 5 years later.
24. Some contempt of court cases were related to revocation proceedings.
25. For quantitative variables, the t-test was also used.
26. Chi-square was adjusted for continuity for 2 x 2 tables.
27. T-test showed age at sentencing to be significant. The probability of getting a greater absolute value of t is 0.0001.