DISSENTING OPINION BY LIM, J.

I would simply reverse special probation conditions 3, 4 and 5; and otherwise affirm. I therefore respectfully dissent.

First, the only "information" before the sentencing court regarding a substance abuse problem was mere innuendo, both indirect and contingent:

> Also the State feels that, according to information that has been provided to the State, an alcohol and substance abuse assessment and whatever treatment that might be recommended by that assessment would be appropriate. State feels that if a PSI had been conducted, that there would have been input from various parties regarding the necessity for the substance abuse and alcohol assessment and treatment.

This is in stark and dispositive contrast to the "sufficient circumstances which justified the imposition of the [drug-testing] condition" in State v. Morris, 72 Haw. 67, 68, 806 P.2d 408, 409 (1991):

> Appellant [(sentenced to probation on April 22, 1987)] admitted in his presentence report that he smoked six joints of marijuana daily, with his last use being between 1984 and 1985. He also revealed that he started drinking at about age 12, drinking an average of 14 cans of beer a day. Although he reported that he stopped drinking in 1986, Appellant indicated that he had been drinking at the time of the offense; he had consumed about five beers.

Id. at 68-69, 806 P.2d at 409. Although "the sentencing court is not limited to any particular source of information in considering the sentence to be imposed upon a defendant[,]" State v. Murphy, 59 Haw. 1, 21, 575 P.2d 448, 461 (1978), surely the sentencing court must have some basis of information before handing down a particular sentence. See Hawaii Revised Statutes (HRS) §§ 706-601 (1993 & Supp. 2003), -602 (1993), -603(2) (Supp. 2003), -604 (1993), -606 (1993) & -624(2) (1993).

Second, a lack of "sufficient circumstances which justif[y] the imposition of the condition" at sentencing, Morris, 72 Haw. at 68, 806 P.2d at 409, may not be remedied after sentencing by ordering a defendant to undergo a substance abuse assessment, with treatment and drug testing to kick in automatically if the evaluator decides the defendant has a substance abuse problem. This effectively deprives the defendant of her rights under HRS § 706-604, to "a fair opportunity . . . to be heard on the issue of the defendant's disposition[,]" HRS § 706-604(1); and to a "fair opportunity . . . to controvert or supplement" pre-sentence reports and diagnoses. HRS § 706-604(2). Moreover, it amounts to an improper delegation and abdication of the sentencing court's sentencing prerogative and responsibility. Cf. State v. Gaylord, 78 Hawai'i 127, 152-153, 890 P.2d 1167, 1192-93 (1995):

> For this reason, among others, HRS § 706-605(1)(d) limits restitution orders to "an amount the defendant can afford to pay." See State v. Johnson, 68 Haw. 292, 297, 711 P.2d 1295, 1299 (1985); [State v. ]Murray, 63 Haw. [12,] 25, 621 P.2d [334,] 343 [(1980)]. In this connection, and despite the fact that the sentencing court "may delegate to the Adult Probation Division the function of making recommendations on the amount of restitution and the manner of payment, the court has the exclusive responsibility and function of imposing a sentence." Johnson, 68 Haw. at 297, 711 P.2d at 1299. Thus, "requisite specificity should be provided by the sentencing court and ought not be left to subsequent administrative determination," Murray, 63 Haw. at 25, 621 P.2d at 343 (citations omitted), because "without express legislative authority, the court cannot delegate the sentencing function to another person or entity." Johnson, 68 Haw. at 297, 711 P.2d at 1299. Cf. United States v. Porter, 41 F.3d 68, 71 (2d Cir. 1994) (sentencing court cannot delegate to probation department, either as to amount or scheduling of installment payments, judicial functions inherent in grant of restitution); United States v. Weichert, 836 F.2d 769, 772 (2d Cir. 1988) (sentencing court may not authorize probation officer to make post-sentencing decision as to amount of restitution), cert. denied, 488 U.S. 1017, 109 S.Ct. 813, 102 L.Ed.2d 802 (1989);

> United States v. Ahmad, 2 F.3d 245, 248-49 (7th Cir. 1993) (sentencing court may not authorize probation officer to make post-sentencing decision as to scheduling of installment payments). Accordingly, "it is incumbent upon the sentencing court to enter into the record findings of fact and conclusions that the manner of payment is reasonable and one which the defendant can afford." Johnson, 68 Haw. at 297-98, 711 P.2d at 1299.

(Footnotes, ellipsis and original brackets omitted.) Indeed, the majority's holding, that every probation sentence may include a substance abuse assessment condition, effectively renders HRS § 706-624(2) a dead letter in this respect, a legislative act I doubt we are empowered to perform.