

JAN 25 2023

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# A BILL FOR AN ACT

RELATING TO TIME LIMITATIONS.

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

1           SECTION 1. The purpose of this Act is to add definitions  
2 for "public officer or employee" and "government" to section  
3 701-108, Hawaii Revised Statutes, to clarify the scope and  
4 applicability of provisions related to the time limitations to  
5 bring prosecution based on misconduct in office.

6           SECTION 2. Section 701-108, Hawaii Revised Statutes, is  
7 amended to read as follows:

8           "§701-108 Time limitations. (1) A prosecution for  
9 murder, murder in the first and second degrees, attempted  
10 murder, attempted murder in the first and second degrees,  
11 criminal conspiracy to commit murder in any degree, criminal  
12 solicitation to commit murder in any degree, sexual assault in  
13 the first and second degrees, sex trafficking, and continuous  
14 sexual assault of a minor under the age of fourteen years may be  
15 commenced at any time.

16           (2) Except as otherwise provided in this section,  
17 prosecutions for other offenses are subject to the following  
18 periods of limitation:

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1 (a) A prosecution for manslaughter where the death was not  
2 caused by the operation of a motor vehicle must be  
3 commenced within ten years after it is committed;

4 (b) A prosecution for a class A felony must be commenced  
5 within six years after it is committed;

6 (c) A prosecution for any felony under part IX of chapter  
7 708 must be commenced within five years after it is  
8 committed;

9 (d) A prosecution for any other felony must be commenced  
10 within three years after it is committed;

11 (e) A prosecution for a misdemeanor or parking violation  
12 must be commenced within two years after it is  
13 committed; and

14 (f) A prosecution for a petty misdemeanor or a violation  
15 other than a parking violation must be commenced  
16 within one year after it is committed.

17 (3) If the period prescribed in subsection (2) has  
18 expired, a prosecution may nevertheless be commenced for:

19 (a) Any offense an element of which is fraud, deception as  
20 defined in section 708-800, or a breach of fiduciary  
21 obligation or the offense of medical assistance fraud  
22 under section 346-43.5, within three years after

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1           discovery of the offense by an aggrieved party or by a  
2           person who has a legal duty to represent an aggrieved  
3           party and who is oneself not a party to the offense,  
4           but in no case shall this provision extend the period  
5           of limitation by more than six years from the  
6           expiration of the period of limitation prescribed in  
7           subsection (2);

8           (b) Any offense based on misconduct in office by a public  
9           officer or employee at any time when the defendant is  
10          in public office or employment or within two years  
11          thereafter, but in no case shall this provision extend  
12          the period of limitation by more than three years from  
13          the expiration of the period of limitation prescribed  
14          in subsection (2); and

15          (c) Any felony offense involving evidence containing  
16          deoxyribonucleic acid from the offender, if a test  
17          confirming the presence of deoxyribonucleic acid is  
18          performed prior to expiration of the period of  
19          limitation prescribed in subsection (2), but in no  
20          case shall this provision extend the period of  
21          limitation by more than ten years from the expiration

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1 of the period of limitation prescribed in subsection  
2 (2).

3 (4) An offense is committed either when every element  
4 occurs, or, if a legislative purpose to prohibit a continuing  
5 course of conduct plainly appears, at the time when the course  
6 of conduct or the defendant's complicity therein is terminated.  
7 Time starts to run on the day after the offense is committed.

8 (5) A prosecution is commenced either when an indictment  
9 is found or a complaint filed, or when an arrest warrant or  
10 other process is issued, provided that such warrant or process  
11 is executed without unreasonable delay.

12 (6) The period of limitation does not run:

13 (a) During any time when the accused is continuously  
14 absent from the State or has no reasonably  
15 ascertainable place of abode or work within the State,  
16 but in no case shall this provision extend the period  
17 of limitation by more than four years from the  
18 expiration of the period of limitation prescribed in  
19 subsection (2);

20 (b) During any time when a prosecution against the accused  
21 for the same conduct is pending in this State; or

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1 (c) For any felony offense under chapter 707, part V or  
2 VI, during any time when the victim is alive and under  
3 eighteen years of age.

4 (7) As used in this section:

5 "Public officer or employee" means any officer or employee  
6 of any branch of government, whether elected, appointed, or  
7 otherwise employed, and any person participating as advisor,  
8 consultant, or otherwise, in performance of a governmental  
9 function, but the term does not include jurors or witnesses.

10 "Government" shall have the same meaning as in section 710-  
11 1000."

12 SECTION 3. New statutory material is underscored.

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

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INTRODUCED BY:



16

BY REQUEST

# S.B. NO. 1281

**Report Title:**

Criminal Proceedings; Public Officer or Employee; Government;  
Time Limitations

**Description:**

Defines the terms "public officer or employee" and "government" in section 701-108, Hawaii Revised Statutes, to clarify the scope and applicability of provisions related to the time limitations to bring prosecution based on misconduct in office.

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

JUSTIFICATION SHEET

DEPARTMENT: Attorney General.

TITLE: A BILL FOR AN ACT RELATING TO TIME LIMITATIONS.

PURPOSE: To add definitions of "public officer or employee" and "government" to clarify the scope and applicability of the provision extending the time limitations to bring prosecutions based on misconduct in office.

MEANS: Amend section 701-108, Hawaii Revised Statutes (HRS), by adding a new subsection.

JUSTIFICATION: The strength and stability of our government rely on the public's trust in our public officials and employees to act with integrity and honesty. Since the recent arrests and convictions of state officials, there is a loss of public trust in governmental institutions and their officers.

Section 701-108, HRS, is an important tool to combat corruption because misconduct by public officials often takes time to discover and investigate. Clarifying and defining who is included as a "public officer or employee", as used in section 701-108(3)(b), and including and defining "government" as used in that definition, is essential to ensure the proper and wide applicability of this tool, thereby increasing the public's confidence and trust in state and local government.

This bill seeks to specifically define "public officer or employee" and include and define "government" to include all public officials and employees within the State.

Impact on the public: This measure will have a positive impact on the public by clarifying which public officers and employees are included for purposes of the

time limitations to bring prosecutions for official misconduct.

Impact on the department and other agencies:

This measure will assist prosecutions of public officials and employees by all prosecuting agencies in that it clarifies the applicability of section 701-108(3)(b), HRS. It will also have a positive impact for all departments as it makes clear that all public officials and employees are subject to this provision.

GENERAL FUND: None.

OTHER FUNDS: None.

PPBS PROGRAM  
DESIGNATION: None.

OTHER AFFECTED  
AGENCIES: None.

EFFECTIVE DATE: Upon approval.