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A BILL FOR AN ACT

RELATING TO DEFERRED PLEAS.

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

1           SECTION 1. Section 853-4, Hawaii Revised Statutes, is  
2 amended to read as follows:

3           "~~§853-4 Chapter not applicable; when.~~ This chapter shall  
4 not apply when:

5           (1) The offense charged involves the intentional, knowing,  
6           reckless, or negligent killing of another person;

7           (2) The offense charged is:

8           (A) A felony that involves the intentional, knowing,  
9           or reckless bodily injury, substantial bodily  
10           injury, or serious bodily injury of another  
11           person; or

12           (B) A misdemeanor or petty misdemeanor that carries a  
13           mandatory minimum sentence and that involves the  
14           intentional, knowing, or reckless bodily injury,  
15           substantial bodily injury, or serious bodily  
16           injury of another person;

- 1           (3) The offense charged involves a conspiracy or  
2                   solicitation to intentionally, knowingly, or  
3                   recklessly kill another person or to cause serious  
4                   bodily injury to another person;
- 5           (4) The offense charged is a class A felony;
- 6           (5) The offense charged is nonprobationable;
- 7           (6) The defendant has been convicted of any offense  
8                   defined as a felony by the Hawaii Penal Code or has  
9                   been convicted for any conduct that if perpetrated in  
10                  this State would be punishable as a felony;
- 11          (7) The defendant is found to be a law violator or  
12                  delinquent child for the commission of any offense  
13                  defined as a felony by the Hawaii Penal Code or for  
14                  any conduct that if perpetrated in this State would  
15                  constitute a felony;
- 16          (8) The defendant has a prior conviction for a felony  
17                  committed in any state, federal, or foreign  
18                  jurisdiction;
- 19          (9) A firearm was used in the commission of the offense  
20                  charged;
- 21          (10) The defendant is charged with the distribution of a  
22                  dangerous, harmful, or detrimental drug to a minor;

- 1           (11) The defendant has been charged with a felony offense  
2                   and has been previously granted deferred acceptance of  
3                   guilty plea status for a prior offense, regardless of  
4                   whether the period of deferral has already expired;
- 5           (12) The defendant has been charged with a misdemeanor  
6                   offense and has been previously granted deferred  
7                   acceptance of guilty plea status for a prior felony,  
8                   misdemeanor, or petty misdemeanor for which the period  
9                   of deferral has not yet expired;
- 10          (13) The offense charged is:
- 11                   (A) Escape in the first degree;
- 12                   (B) Escape in the second degree;
- 13                   (C) Promoting prison contraband in the first degree;
- 14                   (D) Promoting prison contraband in the second degree;
- 15                   (E) Bail jumping in the first degree;
- 16                   (F) Bail jumping in the second degree;
- 17                   (G) Bribery;
- 18                   (H) Bribery of a witness;
- 19                   (I) Intimidating a witness;
- 20                   (J) Bribery of or by a juror;
- 21                   (K) Intimidating a juror;
- 22                   (L) Jury tampering;

- 1 (M) Promoting prostitution in the first degree;
- 2 (N) Promoting prostitution in the second degree;
- 3 (O) Promoting prostitution in the third degree;
- 4 (P) Abuse of family or household members;
- 5 (Q) Sexual assault in the second degree;
- 6 (R) Sexual assault in the third degree;
- 7 (S) A violation of an order issued pursuant to
- 8 chapter 586;
- 9 (T) Promoting child abuse in the second degree;
- 10 (U) Promoting child abuse in the third degree;
- 11 (V) Electronic enticement of a child in the first
- 12 degree; or
- 13 (W) Electronic enticement of a child in the second
- 14 degree; [~~or~~]
- 15 (14) The defendant has been charged with:
  - 16 (A) Knowingly or intentionally falsifying any report
  - 17 required under chapter 11, subpart B of part XII,
  - 18 with the intent to circumvent the law or deceive
  - 19 the campaign spending commission; or
  - 20 (B) Violating section 11-201 or 11-202 [~~-~~]; or
- 21 (15) The defendant holds a commercial driver's license and
- 22 has been charged with violating a traffic control law,

1           other than a parking law, in connection with the  
2           operation of any type of motor vehicle.

3           The court may adopt by rule other criteria in this area."

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

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

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INTRODUCED BY: Calvin K. Boy  
BY REQUEST

JAN 22 2007

JUSTIFICATION SHEET

DEPARTMENT: Transportation

TITLE: A BILL FOR AN ACT RELATING TO DEFERRED PLEAS.

PURPOSE: To conform deferred acceptance of guilty law to the federal commercial driver licensing law for consistency with section 286-245, Hawaii Revised Statutes.

MEANS: Amend section 853-4, Hawaii Revised Statutes.

JUSTIFICATION: The intent of the proposed change is to take corrective action on a program vulnerability to meet the requirements of a federal regulation (49 C.F.R. §384.226).

Although FMCSA legal review found Act 103, Session Laws of Hawaii 2004, section 11, to meet federal requirements, the Judiciary staff attorney attending meetings to implement the MCSIA (Motor Carrier Safety Improvement Act of 1999) and rules written in July 2002 recommended removing the circuit court's option to defer action and dismiss a case without conviction in order to further comply with the MCSIA masking prohibition.

Failure to enact this change could result in the loss of approximately \$4.2 million (or 5 percent) of federal-aid highway funds (based on FY 2006 funding) for the first year of non-compliance and \$8.4 million (or 10 percent) per year thereafter. Motor Carrier Safety Assistance Program (MCSAP) grant funds (approximately \$663,497 in FY 2006) could also be withheld for each year of noncompliance.

Impact on the public:

Prohibits deferred acceptance of guilty or no contest plea from holder of commercial driver's license charged with traffic violation, other than parking violation, in operation of any motor vehicle.

Impact on the department and other agencies:  
The courts will be affected by this legislation.

A.B. 1426

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GENERAL FUND: None.  
OTHER FUNDS: None.  
PPBS PROGRAM DESIGNATION: TRN 597.  
OTHER AFFECTED AGENCIES: State Judiciary.  
EFFECTIVE DATE: Upon approval.