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## A BILL FOR AN ACT

RELATING TO SENTENCING.

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

1           SECTION 1. Chapter 706, Hawaii Revised Statutes, is  
2 amended by adding a new section to be appropriately designated  
3 and to read as follows:  
4           "§706- Truth in sentencing. Notwithstanding any other  
5 provision of law, a person convicted of an offense committed on  
6 or after the effective date of this Act who is sentenced to a  
7 term of imprisonment under this chapter shall serve no less than  
8 eighty-five per cent of the sentence of imprisonment imposed by  
9 the court before being eligible for parole, good time credit  
10 release, furlough, work release, or any other form of release  
11 from confinement in a correctional facility. If the sentence  
12 imposed by the court is life imprisonment with the possibility  
13 of parole, the person shall serve no less than twenty years  
14 before being eligible for parole."

15           SECTION 2. (a) There is established, as an independent  
16 commission in the judiciary, a Hawaii sentencing commission  
17 which shall consist of nine voting members and four non-voting  
18 members.



1           (b) The governor shall appoint the voting members of the  
2 commission and shall designate one member as chair. Three of  
3 the voting members shall be a sitting district court or circuit  
4 court judges, selected from a list of six judges recommended by  
5 the chief justice, and of these three, at least one district  
6 court judge and one circuit court judge shall be appointed. Two  
7 of the voting members shall be deputy prosecuting attorneys,  
8 selected from a list of six deputy prosecuting attorneys  
9 recommended by the Hawaii prosecuting attorneys' association.  
10 One of the voting members shall be a deputy attorney general,  
11 selected from a list of three deputy attorneys general  
12 recommended by the attorney general. Two of the voting members  
13 shall be members of the Hawaii association of criminal defense  
14 attorneys, selected from a list of five members recommended by  
15 the Hawaii association of criminal defense attorneys. One  
16 voting member shall be a deputy public defender, selected from a  
17 list of three deputy public defenders recommended by the State  
18 public defender. The non-voting members shall be the director  
19 of public safety, or the director's designee; the chair of the  
20 Hawaii paroling authority, or the chair's designee; the  
21 president of the state of Hawaii organization of police  
22 officers, or the president's designee; and a victim-witness



1 advocate selected by the crime victims compensation commission.  
2 The chairman and the members of the commission shall be subject  
3 to removal from the commission by the governor only for neglect  
4 of duty or malfeasance in office or for a showing of other good  
5 cause.

6 (c) The voting members of the commission shall be  
7 appointed for six-year terms; provided however, that the initial  
8 terms of the first members of the commission shall be staggered  
9 so that four members, including the chair, serve terms of six  
10 years; three members serve terms of four years; and two members  
11 serve terms of two years. Terms of those members appointed  
12 because of their public office or position shall end when the  
13 member leaves the public office or position, and a successor  
14 shall be appointed in the prescribed manner.

15 (d) No voting member may serve more than two full terms.  
16 A voting member appointed to fill a vacancy that occurs before  
17 the expiration of the term for which the member's predecessor  
18 was appointed shall be appointed only for the remainder of that  
19 term.

20 (e) Members of the commission shall serve without  
21 compensation, but each member shall be reimbursed by the State



1 for all reasonable expenses incurred in the performance of  
2 official duties.

3 (f) Judges who serve on the commission and shall not be  
4 required to resign their judicial appointments.

5 (g) The commission shall have the power to perform the  
6 functions necessary to carry out the purposes of this chapter  
7 and may delegate to any member or designated person powers as  
8 may be appropriate to the accomplishment of the duties of the  
9 commission as set forth below. In particular, the commission  
10 shall:

11 (1) Appoint and fix the salary and duties of a director  
12 and other personnel, who shall be appointed without  
13 regard to chapter 76 and serve at the discretion of  
14 the commission;

15 (2) Submit appropriations requests to the state director  
16 of finance;

17 (3) Utilize, with their consent, the services, equipment,  
18 personnel, information, and facilities of federal,  
19 state, county, and private agencies and  
20 instrumentalities with or without reimbursement  
21 therefor;



- 1           (4) Enter into and perform contracts, leases, cooperative  
2           agreements, and other transactions as may be necessary  
3           in the conduct of the functions of the commission,  
4           with any public agency, or with any person, firm,  
5           association, corporation, educational institution, or  
6           nonprofit organization;
- 7           (5) Accept and employ, in carrying out the provisions of  
8           this chapter, voluntary and uncompensated services;
- 9           (6) Request information, data, and reports from any Hawaii  
10          agency or judicial officer as the commission from time  
11          to time may require and as may be produced consistent  
12          with other law;
- 13          (7) Serve as a clearinghouse for the collection,  
14          preparation, and dissemination of information on  
15          sentencing practices and assist courts, departments,  
16          and agencies in the development, maintenance, and  
17          coordination of sound sentencing practices;
- 18          (8) Make recommendations to the legislature concerning  
19          modification or enactment of laws relating to crimes,  
20          sentencing, and correctional matters, as well as  
21          recommendations concerning programmatic, budgetary,  
22          and capital matters that the commission finds to be



1           necessary and advisable to carry out the purposes of  
2           this Act; and

3           (9) Hold hearings and call witnesses to assist the  
4           commission in the exercise of its powers or duties.

5           (h) Except as hereinafter provided, the commission shall  
6           act by affirmative vote of at least five of its voting members.

7           (i) Upon request of the commission, each agency and  
8           department of the State is hereby authorized and directed to  
9           make its services, equipment, personnel, facilities, and  
10          information available to the greatest practicable extent to the  
11          commission in the execution of its functions. The commission,  
12          to the extent practicable, shall, utilize existing resources of  
13          the administrative offices of the district and circuit courts  
14          for the purpose of avoiding unnecessary duplication.

15          (j) Except as otherwise provided by law, the commission  
16          shall maintain and make available for public inspection a record  
17          of the final vote of each member on any action taken by it.

18          (k) The director shall supervise the activities of persons  
19          employed by the commission and perform other duties assigned to  
20          the director by the commission. The director, subject to the  
21          approval of the commission, shall appoint officers and employees



1 as necessary in the execution of the functions of the  
2 commission.

3 SECTION 3. (a) The purposes of the Hawaii sentencing  
4 commission shall be to recommend sentencing policies and  
5 practices for the State that:

- 6 (1) Punish the offender justly;
- 7 (2) Secure the public safety of the State by providing a  
8 swift and sure response to the commission of crime;
- 9 (3) Meet the purposes of sentencing, which are to:
  - 10 (A) Reflect the seriousness of the offense;
  - 11 (B) Promote respect for the law;
  - 12 (C) Provide just punishment for the offense;
  - 13 (D) Afford adequate deterrence to criminal conduct;
  - 14 (E) Protect the public from further crimes of the  
15 defendant; and
  - 16 (F) Provide the defendant with educational or  
17 vocational training;
- 18 (4) Provide certainty and fairness in sentencing, avoiding  
19 unwarranted sentencing disparities among defendants  
20 with similar criminal records who have been found  
21 guilty of similar criminal conduct, while maintaining  
22 judicial discretion and sufficient flexibility to



1 permit individualized sentences warranted by  
2 mitigating or aggravating factors;

3 (5) Promote truth in sentencing, in order that all parties  
4 involved in the criminal justice process, including  
5 the prosecution, the defendant, the court, the victim,  
6 and the public, are aware of the nature and length of  
7 the sentence and its basis;

8 (6) Ration correctional capacity and other criminal  
9 justice resources to sentences imposed, making the  
10 rationing explicit, rational, and coherent in order  
11 to:

12 (A) Afford sufficient correctional capacity to  
13 incarcerate violent offenders consistent with  
14 paragraph (1);

15 (B) Evaluate, on a yearly basis, the performance of  
16 the rationing, making appropriate remedial  
17 recommendations;

18 (C) Prevent the prison population in the State from  
19 exceeding the capacity of the prisons, prevent  
20 premature release for any other reason, and serve  
21 the ends of truth in sentencing by taking into  
22 account, in establishing sentencing policies and



1 practices for the State, the nature and capacity  
2 of correctional facilities and community  
3 sanctions available in the State consistent with  
4 protecting public safety;

5 (7) Encourage the development and implementation of  
6 intermediate sanctions in appropriate cases as a  
7 sentencing option, consistent with protecting public  
8 safety;

9 (8) Enhance the value of criminal sanctions and ensure  
10 that the criminal penalties imposed are the most  
11 appropriate ones by encouraging the development of a  
12 wider array of criminal sanctions;

13 (9) Make offenders accountable to the community for their  
14 criminal behavior, through community service,  
15 restitution, and a range of intermediate sanctions;  
16 and

17 (10) Evaluate the impact, if any, on correctional facility  
18 capacity of the discontinuation of sentence reductions  
19 for good conduct; and

20 (b) Nothing contained in this section shall be construed  
21 as creating any right of action.



1           SECTION 4. (a) The commission, by affirmative vote of at  
2 least six members of the commission and consistent with all  
3 pertinent provisions of this Act and existing law, shall  
4 recommend sentencing guidelines, which shall take effect only if  
5 enacted into law.

6           (b) The sentencing guidelines shall be used by the  
7 district and circuit courts of the State in imposing a sentence  
8 in every criminal case. The sentence shall not be suspended in  
9 whole or in part. The sentencing judge shall impose a sentence  
10 within a range prescribed by the sentencing guidelines for every  
11 offense, unless the sentencing judge sets forth in writing  
12 reasons for departing from that range, on a sentencing statement  
13 as set forth in subsection (1), based on a finding that there  
14 exists one or more aggravating or mitigating circumstances that  
15 should result in a sentence different from the one otherwise  
16 prescribed by the guidelines. The commission shall establish  
17 non-exclusive aggravating and mitigating circumstances to guide  
18 the sentencing judge, as set forth in subsection (g). In the  
19 absence of an applicable sentencing guideline, the court shall  
20 impose an appropriate sentence, having due regard for the  
21 purposes set forth in section 3.



1 (c) The sentencing guidelines shall be based upon  
2 reasonable offense characteristics, taking into account the  
3 nature and seriousness of each offense, and reasonable offender  
4 characteristics, taking into account the offender's character,  
5 background, amenability to correction, and criminal history and  
6 the availability of the State's criminal justice and public  
7 safety resources.

8 (d) For every criminal offense under the laws of the  
9 State, the guidelines shall establish:

- 10 (1) The circumstances, if any, under which the imposition  
11 of intermediate sanctions may be proper and the  
12 circumstances under which imprisonment may be proper;
- 13 (2) Appropriate intermediate sanctions for offenders for  
14 whom imprisonment may not be necessary or appropriate.  
15 In establishing intermediate sanctions, the commission  
16 shall make specific reference to non-institutional  
17 sanctions, including but not limited to: standard  
18 probation, intensive supervision probation, community  
19 service, home confinement, weekend prison sentences,  
20 day reporting, residential programming, substance  
21 abuse treatment, restitution, means-based fines,  
22 continuing education, vocational training, special



1 education, and psychological counseling; provided  
2 however, that in no event shall a state employee be  
3 replaced by an offender serving an intermediate  
4 sanction;

- 5 (3) A target sentence for offenders for whom an  
6 intermediate sanction may not be appropriate based  
7 upon a combination of reasonable offense and offender  
8 characteristics for each offense and the adequacy of  
9 the State's criminal justice and public safety  
10 resources. The guidelines shall provide that, for  
11 each target sentence, the sentencing judge may impose  
12 a maximum sentence within a range to be established by  
13 the commission for each offense and a minimum sentence  
14 of two-thirds of the maximum sentence; provided  
15 however, that for target sentences of two years or  
16 greater, the range may not be greater than twenty per  
17 cent greater or less than the target sentence; and  
18 provided further, that for target sentences of less  
19 than two years, the sentencing judge may impose an  
20 intermediate sanction. Within that range, the  
21 sentencing court may impose any sentence without  
22 stating its reasons therefor. The commission shall



1 act consistent with the need for flexibility,  
2 expeditious administration, case-flow management, and  
3 resources of the trial courts in sentencing  
4 guidelines;

5 (4) The circumstances, which shall not be considered  
6 exclusive, under which a sentencing judge may depart  
7 upward or downward from the range otherwise prescribed  
8 by the guidelines; and

9 (5) The circumstances, if any, under which substance abuse  
10 treatment may be mandated and the circumstances under  
11 which substance abuse treatment may be offered to an  
12 offender for voluntary participation.

13 (e) The commission shall adopt, in conjunction with the  
14 sentencing guidelines, general policy statements which shall be  
15 used in interpreting the guidelines.

16 (f) In its development of the sentencing guidelines, the  
17 commission shall not be bound by any existing mandatory maximum  
18 or minimum term prescribed by statute and may recommend target  
19 sentences that exceed existing mandatory maximum terms or that  
20 fall below existing mandatory minimum terms. The commission  
21 shall conduct an empirical study in order to ascertain, to the  
22 extent practical, a survey of those individuals appearing before



1 the State's criminal courts and those committed to probation and  
2 prison. It shall also include the average sentences imposed for  
3 all offenses prior to the adoption by the commission of the  
4 sentencing guidelines and the length of prison terms actually  
5 served in such cases. The commission shall not be bound by  
6 average sentences and shall independently develop a sentencing  
7 range that is consistent with the purposes of sentencing  
8 described in section 3. The commission shall establish  
9 guidelines regarding participation in work release, education,  
10 training, employment, or treatment programs outside correctional  
11 facilities. The commission shall utilize this data and develop  
12 any other data it deems necessary to assess the impact of the  
13 sentencing guidelines and carry out the purposes set forth in  
14 section 3.

15 (g) In establishing non-exclusive aggravating and  
16 mitigating circumstances pursuant to subsection (b), the  
17 commission shall determine whether the following kinds of  
18 factors, among others, are relevant and shall take these factors  
19 into account only to the extent that it deems them to be  
20 relevant:

21 (1) Factors that describe the nature and circumstances of  
22 the offense;



- 1           (2) Factors that describe the offender's mental state at
- 2           the time of the offense;
- 3           (3) Factors that describe the relationship, if any,
- 4           between the offender and victim;
- 5           (4) Factors that describe the nature and degree of the
- 6           harm caused by the offense;
- 7           (5) The community view of the gravity of the offense;
- 8           (6) The public concern generated by the offense;
- 9           (7) The deterrent effect a particular sentence may have on
- 10          the commission of the offense by others;
- 11          (8) The current incidence of the offense in the community
- 12          and in the State as a whole;
- 13          (9) The role in the offense of each offender in cases
- 14          involving multiple offenders;
- 15          (10) The age of the offender;
- 16          (11) The mental and emotional condition of the offender, to
- 17          the extent that such condition mitigates the
- 18          defendant's culpability or to the extent that such
- 19          condition is otherwise plainly relevant;
- 20          (12) The offender's physical condition, including drug
- 21          dependence;
- 22          (13) The offender's family ties and responsibilities;



1 (14) The offender's community ties;

2 (15) The offender's degree of dependence upon criminal  
3 activity for a livelihood;

4 (16) The offender's character and personal history; and

5 (17) The offender's amenability to correction, treatment,  
6 or supervision.

7 (h) Except for the crimes set forth in part II of chapter  
8 707, the sentencing judge may depart from the range established  
9 by the sentencing guidelines and impose a sentence below any  
10 mandatory minimum term prescribed by statute, if the judge sets  
11 forth in writing reasons for departing from that range on a  
12 sentencing statement as set forth in subsection (l), based on a  
13 finding that there exists one or more mitigating circumstances  
14 that should result in a sentence different from the one  
15 otherwise prescribed by the guidelines and below any applicable  
16 mandatory minimum term.

17 (i) The commission shall ensure that the guidelines are  
18 neutral as to the race, sex, national origin, creed, religion,  
19 and socio-economic status of offenders.

20 (j) The commission periodically shall assess the impact of  
21 the sentencing guidelines to determine the type and amount of  
22 correctional resources needed. In particular, the commission



1 shall examine the impact of the guidelines on intermediate  
2 sanctions and correctional institutions and may consult with all  
3 appropriate authorities for this purpose. Beginning in the year  
4 after the sentencing guidelines become law, but no later than  
5 May 1 of that year, the following persons shall submit comments  
6 and recommendations to the commission regarding the  
7 implementation and impact of the sentencing guidelines:

- 8 (1) The attorney general;
- 9 (2) The chair the Hawaii paroling authority;
- 10 (3) The prosecuting attorney of each county;
- 11 (4) The state public defender;
- 12 (5) The director of public safety;
- 13 (6) The chief judges of the circuit court and district  
14 court of each circuit; and
- 15 (7) The Hawaii association of criminal defense attorneys.
- 16 (k) Beginning in the calendar year following the effective  
17 date of the sentencing guidelines, the commission annually, not  
18 less than twenty days prior to the convening of each regular  
19 session of the legislature, may submit a report to the  
20 legislature including proposed amendments to the sentencing  
21 guidelines. The amendments to the guidelines shall take effect  
22 only if enacted into law.



1           (1) The chief justice, in consultation with the sentencing  
2 commission, shall establish the form of a sentencing statement,  
3 conforming to the sentencing guidelines, which shall be used by  
4 the sentencing judge in the application of the guidelines when  
5 imposing a sentence. The sentencing judge shall complete the  
6 statement for every sentence imposed. If the sentencing judge  
7 imposes a sentence that departs from the range established by  
8 the guidelines, the judge shall specify in the sentencing  
9 statement the facts, circumstances, evidence, opinions, and any  
10 other matters considered by the judge to support the mitigating  
11 circumstances justifying the imposition of a sentence different  
12 from the one otherwise prescribed by the guidelines or below any  
13 applicable mandatory minimum term. One copy of the sentencing  
14 statement shall be forwarded by the court to the commission,  
15 which shall be used by the commission to submit to the  
16 legislature, as part of its annual report, an analysis of  
17 sentencing patterns under the guidelines.

18           (m) Any inmate sentenced to a state facility prior to the  
19 effective date of any sentencing guidelines enacted into law  
20 shall be subject to the law and rules governing the issuance of  
21 parole and the supervision of parole at the time the offense was  
22 committed.



1 (n) A person sentenced to a term of imprisonment as  
2 prescribed by any sentencing guidelines enacted into law shall  
3 be eligible for parole as provided by section 706- .

4 (o) The commission shall provide a public hearing and  
5 opportunity for public comment on its sentencing guidelines  
6 prior to submitting the guidelines to the legislature.

7 SECTION 5. There is appropriated out of the general  
8 revenues of the State of Hawaii the sum of \$ , or so much  
9 thereof as may be necessary for fiscal year 2007-2008, and the  
10 same sum, or so much thereof as may be necessary for fiscal year  
11 2008-2009, for establishing and operating the Hawaii sentencing  
12 guidelines commission.

13 The sums appropriated shall be expended by the judiciary  
14 for the purposes of this Act.

15 SECTION 6. New statutory material is underscored.

16 SECTION 7. This Act shall take effect on July 1, 2007;  
17 provided that section 1 shall take effect on July 1, 2009.

18

INTRODUCED BY: *Bob Johnson*

JAN 24 2007



**Report Title:**

Sentencing; Parole

**Description:**

Establishes sentencing guidelines commission and sets forth standards to be applied in developing guidelines for approval by the legislature. Establishes "truth-in-sentencing" by requiring those persons convicted of a crime and sentenced to prison to serve 85% of the prison term imposed. "Truth-in-sentencing" provisions effective on 07/01/2009.

