

JAN 23 2009

A BILL FOR AN ACT

RELATING TO SENTENCING OF REPEAT OFFENDERS.

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

1 SECTION 1. The current law on sentencing of repeat
2 offenders (section 706-606.5, Hawaii Revised Statutes), known as
3 mandatory minimum sentencing, was originally enacted by Act 181,
4 Session Laws of Hawaii 1976. With respect to this legislation,
5 the Committee on Conference stated: "Your Committee finds that
6 the high incidence of repeated offenses by previously convicted
7 persons within the State of Hawaii presents a clear danger to
8 its citizens. In particular, your Committee concurs that
9 necessary steps should be taken so that any person convicted of
10 some of the most serious and reprehensible felonies as defined
11 by the Hawaii Penal Code be sentenced, for each conviction after
12 the first conviction to a mandatory sentence without possibility
13 of parole."

14 Act 181 identified ten felonies deemed to justify the
15 imposition of its mandatory sentencing requirements. Section
16 706-606.5, Hawaii Revised Statutes, now specifies in excess of
17 thirty-six felonies.



1 The results of a 2008 poll released by Families Against
2 Mandatory Minimums shows widespread support for ending mandatory
3 minimum sentences for nonviolent offenses. Seventy-eight per
4 cent of Americans or nearly eight Americans in ten agree that
5 courts, not Congress, should determine an individual's prison
6 sentence. Six Americans in ten or fifty-nine per cent oppose
7 mandatory minimum sentences for nonviolent offenders.

8 Fifty-seven per cent of Americans polled would likely vote for a
9 candidate for Congress who would eliminate all mandatory minimum
10 sentencing for nonviolent crimes. Based upon the poll, Families
11 Against Mandatory Minimums concludes that mandatory minimum
12 sentences have not discouraged drug use, have not reduced drug
13 trafficking, have created soaring state and federal corrections
14 costs, impose substantial indirect costs on families by
15 imprisoning spouses, parents, and breadwinners for lengthy
16 periods of time; are not applied evenly, thus disproportionately
17 impacting minorities and resulting in vastly different sentences
18 for equally blameworthy offenders, and usurp judicial
19 discretion.

20 The current sentencing system in Hawaii has an impact on
21 native Hawaiians and Pacific islanders, who are incarcerated at
22 a disproportionate rate to their percentage of the population.



1 Mandatory minimum sentences imposed upon nonviolent offenders
2 are helping to fuel the racial disparities in Hawaii's prison
3 population. Mandatory minimum sentences have also fueled a
4 dramatic increase in the incarceration of women.

5 The American Bar Association Justice Kennedy Commission, in
6 a 2003 *Report to the House of Delegates*, recommended, among
7 other things, that:

8 (1) Lengthy periods of incarceration should be reserved
9 for offenders who pose the greatest danger to the
10 community and who commit the most serious offenses;

11 (2) Alternatives to incarceration should be provided when
12 offenders pose minimum risk to the community and
13 appear likely to benefit from rehabilitation efforts;
14 and

15 (3) Mandatory minimum sentencing statutes should be
16 repealed.

17 The legislature believes that a better, more cost-effective
18 "alternative sentencing" approach would be to treat nonviolent
19 offenses in the same manner as other serious felonies, meaning
20 that sentences would be determined by a judge with access to the
21 offender's criminal record and knowledge of the circumstances
22 involved in the offense.



1 Clearly, some offenders will reenter the prison system upon
2 release despite the best intentions of state agencies, law
3 enforcement, nonprofit service providers, faith based
4 initiatives, and the offenders themselves. However, the
5 "alternative sentencing" approach will at least provide judges
6 with the authority to use discretion when sentencing offenders.
7 Additionally, "alternative sentencing" will make available an
8 array of programs, strategies, and tactics to help offenders
9 become successful members of society.

10 Alternative sentencing also reduces the cost of
11 corrections. Diverting individuals away from prison saves money
12 and in many cases provides a better solution to offenders and
13 society because it makes available effective services that
14 enable offenders to become productive citizens.

15 The purpose of this Act is to make mandatory minimum
16 sentencing of repeat offenders discretionary.

17 SECTION 2. Section 706-606.5, Hawaii Revised Statutes, is
18 amended to read as follows:

19 **"§706-606.5 Sentencing of repeat offenders. (1)**

20 Notwithstanding section 706-669 and any other law to the
21 contrary, any person convicted of murder in the second degree,
22 any class A felony, any class B felony, or any of the following



1 class C felonies: section 188-23 relating to possession or use
2 of explosives, electrofishing devices, and poisonous substances
3 in state waters; section 386-98(d)(1) relating to fraud
4 violations and penalties; section 431:10A-131(b)(2) relating to
5 insurance fraud; section 431:10C-307.7(b)(2) relating to
6 insurance fraud; section 432:1-106(b)(2) relating to insurance
7 fraud; section 432D-18.5(b)(2) relating to insurance fraud;
8 section 707-703 relating to negligent homicide in the second
9 degree; section 707-711 relating to assault in the second
10 degree; section 707-713 relating to reckless endangering in the
11 first degree; section 707-716 relating to terroristic
12 threatening in the first degree; section 707-721 relating to
13 unlawful imprisonment in the first degree; section 707-732
14 relating to sexual assault or rape in the third degree; section
15 707-752 relating to promoting child abuse in the third degree;
16 section 707-757 relating to electronic enticement of a child in
17 the second degree; section 707-766 relating to extortion in the
18 second degree; section 708-811 relating to burglary in the
19 second degree; section 708-821 relating to criminal property
20 damage in the second degree; section 708-831 relating to theft
21 in the first degree as amended by Act 68, Session Laws of Hawaii
22 1981; section 708-831 relating to theft in the second degree;



1 section 708-835.5 relating to theft of livestock; section
2 708-836 relating to unauthorized control of propelled vehicle;
3 section 708-839.8 relating to identity theft in the third
4 degree; section 708-839.55 relating to unauthorized possession
5 of confidential personal information; section 708-852 relating
6 to forgery in the second degree; section 708-854 relating to
7 criminal possession of a forgery device; section 708-875
8 relating to trademark counterfeiting; section 710-1071 relating
9 to intimidating a witness; section 711-1103 relating to riot;
10 section 712-1203 relating to promoting prostitution in the
11 second degree; section 712-1221 relating to gambling in the
12 first degree; section 712-1224 relating to possession of
13 gambling records in the first degree; section 712-1243 relating
14 to promoting a dangerous drug in the third degree; section
15 712-1247 relating to promoting a detrimental drug in the first
16 degree; section 846E-9 relating to failure to comply with
17 covered offender registration requirements; section 134-7
18 relating to ownership or possession of firearms or ammunition by
19 persons convicted of certain crimes; section 134-8 relating to
20 ownership, etc., of prohibited weapons; section 134-9 relating
21 to permits to carry, or who is convicted of attempting to commit
22 murder in the second degree, any class A felony, any class B



1 felony, or any of the class C felony offenses enumerated above
2 and who has a prior conviction or prior convictions for the
3 following felonies, including an attempt to commit the same:
4 murder, murder in the first or second degree, a class A felony,
5 a class B felony, any of the class C felony offenses enumerated
6 above, or any felony conviction of another jurisdiction, [~~shall~~]
7 may be sentenced to a mandatory minimum period of imprisonment
8 without possibility of parole during such period as follows:

9 (a) One prior felony conviction:

10 (i) Where the instant conviction is for murder in the
11 second degree or attempted murder in the second
12 degree--ten years;

13 (ii) Where the instant conviction is for a class A
14 felony--six years, eight months;

15 (iii) Where the instant conviction is for a class B
16 felony--three years, four months; and

17 (iv) Where the instant conviction is for a class C
18 felony offense enumerated above--one year, eight
19 months;

20 (b) Two prior felony convictions:



(i) Where the instant conviction is for murder in the second degree or attempted murder in the second degree--twenty years;

(ii) Where the instant conviction is for a class A felony--thirteen years, four months;

(iii) Where the instant conviction is for a class B felony--six years, eight months; and

(iv) Where the instant conviction is for a class C felony offense enumerated above--three years, four months;

(c) Three or more prior felony convictions:

(i) Where the instant conviction is for murder in the second degree or attempted murder in the second degree--thirty years;

(ii) Where the instant conviction is for a class A felony--twenty years;

(iii) Where the instant conviction is for a class B felony--ten years; and

(iv) Where the instant conviction is for a class C felony offense enumerated above--five years.

(2) Except as in subsection (3), a person shall not be sentenced to a mandatory minimum period of imprisonment under



1 this section unless the instant felony offense was committed
2 during such period as follows:

3 (a) Within twenty years after a prior felony conviction
4 where the prior felony conviction was for murder in
5 the first degree or attempted murder in the first
6 degree;

7 (b) Within twenty years after a prior felony conviction
8 where the prior felony conviction was for murder in
9 the second degree or attempted murder in the second
10 degree;

11 (c) Within twenty years after a prior felony conviction
12 where the prior felony conviction was for a class A
13 felony;

14 (d) Within ten years after a prior felony conviction where
15 the prior felony conviction was for a class B felony;

16 (e) Within five years after a prior felony conviction
17 where the prior felony conviction was for a class C
18 felony offense enumerated above;

19 (f) Within the maximum term of imprisonment possible after
20 a prior felony conviction of another jurisdiction.

21 (3) If a person was sentenced for a prior felony
22 conviction to a special term under section 706-667, then the



1 person shall not be sentenced to a mandatory minimum period of
2 imprisonment under this section unless the instant felony
3 offense was committed during such period as follows:

4 (a) Within eight years after a prior felony conviction
5 where the prior felony conviction was for a class A
6 felony;

7 (b) Within five years after the prior felony conviction
8 where the prior felony conviction was for a class B
9 felony;

10 (c) Within four years after the prior felony conviction
11 where the prior felony conviction was for a class C
12 felony offense enumerated above.

13 (4) Notwithstanding any other law to the contrary, any
14 person convicted of any of the following misdemeanor offenses:

15 (a) Section 707-712 relating to assault in the third
16 degree;

17 (b) Section 707-717 relating to terroristic threatening in
18 the second degree;

19 (c) Section 707-733 relating to sexual assault in the
20 fourth degree;

21 (d) Section 708-822 relating to criminal property damage
22 in the third degree;



(e) Section 708-832 relating to theft in the third degree;
and

(f) Section 708-833.5(2) relating to misdemeanor
shoplifting,

and who has been convicted of any of the offenses enumerated
above on at least three prior and separate occasions within
three years of the date of the commission of the present
offense, ~~[shall]~~ may be sentenced to no less than nine months of
imprisonment. Whenever a court sentences a defendant under this
subsection for an offense under section 707-733, the court shall
order the defendant to participate in a sex offender assessment
and, if recommended based on the assessment, participate in the
sex offender treatment program established by chapter 353E.

(5) The sentencing court may impose the above sentences
consecutive to any sentence imposed on the defendant for a prior
conviction, but such sentence shall be imposed concurrent to the
sentence imposed for the instant conviction. The court may
impose a lesser mandatory minimum period of imprisonment without
possibility of parole than that mandated by this section where
the court finds that strong mitigating circumstances warrant
such action. Strong mitigating circumstances shall include, but
shall not be limited to the provisions of section 706-621. The



1 court shall provide a written opinion stating its reasons for
2 imposing the lesser sentence.

3 (6) A person who is imprisoned in a correctional
4 institution pursuant to subsection (1) shall not be paroled
5 prior to the expiration of the mandatory minimum term of
6 imprisonment imposed pursuant to subsection (1).

7 (7) For purposes of this section:

8 (a) Convictions under two or more counts of an indictment
9 or complaint shall be considered a single conviction
10 without regard to when the convictions occur;

11 (b) A prior conviction in this or another jurisdiction
12 shall be deemed a felony conviction if it was
13 punishable by a sentence of death or of imprisonment
14 in excess of one year; and

15 (c) A conviction occurs on the date judgment is entered."

16 SECTION 3. This Act does not affect rights and duties that
17 matured, penalties that were incurred, and proceedings that were
18 begun, before the effective date of this Act.

19 SECTION 4. Statutory material to be repealed is bracketed
20 and stricken. New statutory material is underscored.

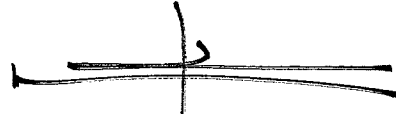
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1 SECTION 5. This Act shall take effect on July 1, 2009.

2

INTRODUCED BY: _____


By Request



Report Title:

Sentencing; Mandatory Minimum Terms

Description:

Changes the mandatory minimum sentencing of repeat offenders from mandatory to discretionary.

