

JAN 25 2017

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# A BILL FOR AN ACT

RELATING TO MINIMUM TERMS OF IMPRISONMENT.

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

1           SECTION 1. The legislature finds that judges are in the  
2 best position to determine appropriate minimum terms of  
3 imprisonment for convicted felons sentenced to a maximum  
4 indeterminate term of imprisonment. Currently, however, this  
5 responsibility comprises an estimated one-third of the Hawaii  
6 paroling authority's workload, which also includes later  
7 deciding whether and when to parole the offender. Unlike  
8 paroling authority members, a sentencing judge presides over the  
9 pretrial motions, change of plea or trial, and sentencing phases  
10 of a case, has the opportunity to become familiar with an  
11 offender's history and the facts and circumstances of the  
12 offense committed, and receives input from the prosecution,  
13 defense, and victim or victim's surviving family members.

14           The legislature also finds that the information needed by a  
15 sentencing judge to make an informed decision about an  
16 offender's minimum term is already transmitted to the judge in  
17 the form of a pre-sentence correctional diagnosis report before



1 the offender's sentencing hearing. For these reasons, the  
2 legislature finds that it would be more efficient to require a  
3 consolidated hearing on a convicted offender's sentence and, if  
4 sentenced to a maximum indeterminate term of imprisonment, the  
5 minimum term of imprisonment the offender must serve before  
6 becoming eligible for parole.

7 The legislature further finds that crime victims and their  
8 surviving family members would suffer less trauma if they could  
9 present their input at a consolidated sentencing and minimum  
10 setting hearing conducted in court, instead of having to attend  
11 a separate minimum setting hearing before the paroling authority  
12 at a later date, usually conducted in a correctional facility.

13 The purpose of this Act is to provide for more informed  
14 sentencing decisions and to reduce the burden on victims and  
15 their surviving family members by requiring the sentencing  
16 judge, instead of the Hawaii paroling authority, to determine  
17 the minimum term of imprisonment that a convicted offender must  
18 serve before becoming eligible for parole.

19 SECTION 2. Section 706-604, Hawaii Revised Statutes, is  
20 amended to read as follows:



1           "§706-604 Opportunity to be heard with respect to sentence  
2 and minimum term; notice of pre-sentence report; opportunity to  
3 controvert or supplement; transmission of report to department.

4 (1) Before imposing sentence, the court shall afford a fair  
5 opportunity to the defendant to be heard on the issue of the  
6 defendant's disposition[-]; including the court's determination  
7 of any minimum term of imprisonment pursuant to section  
8 706-669(1), if applicable.

9           (2) The court shall furnish to the defendant or the  
10 defendant's counsel and to the prosecuting attorney a copy of  
11 the report of any pre-sentence diagnosis or psychological,  
12 psychiatric, or other medical examination and afford fair  
13 opportunity, if the defendant or the prosecuting attorney so  
14 requests, to controvert or supplement them. The court shall  
15 amend or order the amendment of the report upon finding that any  
16 correction, modification, or addition is needed and, where  
17 appropriate, shall require the prompt preparation of an amended  
18 report in which material required to be deleted is completely  
19 removed or other amendments, including additions, are made.

20           (3) In all circuit court cases, regardless of whether a  
21 pre-sentence report has been prepared or waived, the court shall



1 afford a fair opportunity to the victim to be heard on the issue  
2 of the defendant's disposition, before imposing a sentence[-] or  
3 any applicable minimum term of imprisonment. The court, service  
4 center, or agency personnel who prepare the pre-sentence  
5 diagnosis and report shall inform the victim of the sentencing  
6 date and of the victim's opportunity to be heard. In the case  
7 of a homicide or where the victim is a minor or is otherwise  
8 unable to appear at the sentencing hearing, the victim's family  
9 shall be afforded the fair opportunity to be heard.

10 (4) If the defendant is sentenced to imprisonment, a copy  
11 of the report of any pre-sentence diagnosis or psychological,  
12 psychiatric, or other medical examination, which shall  
13 incorporate any amendments ordered by the court, shall be  
14 transmitted immediately to the department of public safety."

15 SECTION 3. Section 706-656, Hawaii Revised Statutes, is  
16 amended by amending subsection (2) to read as follows:

17 "(2) Except as provided in section 706-657, pertaining to  
18 enhanced sentence for second degree murder, persons convicted of  
19 second degree murder and attempted second degree murder shall be  
20 sentenced to life imprisonment with possibility of parole. The  
21 minimum length of imprisonment shall be determined by the



1 ~~[Hawaii paroling authority;]~~ court in accordance with section  
2 706-669; provided that persons who are repeat offenders under  
3 section 706-606.5 shall serve at least the applicable mandatory  
4 minimum term of imprisonment.

5 If the court imposes a sentence of life imprisonment  
6 without possibility of parole pursuant to section 706-657, as  
7 part of that sentence, the court shall order the director of  
8 public safety and the Hawaii paroling authority to prepare an  
9 application for the governor to commute the sentence to life  
10 imprisonment with parole at the end of twenty years of  
11 imprisonment; provided that persons who are repeat offenders  
12 under section 706-606.5 shall serve at least the applicable  
13 mandatory minimum term of imprisonment."

14 SECTION 4. Section 706-659, Hawaii Revised Statutes, is  
15 amended to read as follows:

16 "**§706-659 Sentence of imprisonment for class A felony.**  
17 Notwithstanding part II; sections 706-605, 706-606, 706-606.5,  
18 706-660.1, 706-661, and 706-662; and any other law to the  
19 contrary, a person who has been convicted of a class A felony,  
20 except class A felonies defined in chapter 712, part IV, or  
21 section 707-702, shall be sentenced to an indeterminate term of



1 imprisonment of twenty years without the possibility of  
2 suspension of sentence or probation. The minimum length of  
3 imprisonment shall be determined by the [~~Hawaii paroling~~  
4 ~~authority~~] court in accordance with section 706-669. A person  
5 who has been convicted of a class A felony defined in chapter  
6 712, part IV, or section 707-702, may be sentenced to an  
7 indeterminate term of imprisonment, except as provided for in  
8 section 706-660.1 relating to the use of firearms in certain  
9 felony offenses and section 706-606.5 relating to repeat  
10 offenders. When ordering such a sentence, the court shall  
11 impose the maximum length of imprisonment, which shall be twenty  
12 years. The minimum length of imprisonment shall be determined  
13 by the [~~Hawaii paroling authority~~] court in accordance with  
14 section 706-669."

15 SECTION 5. Section 706-660, Hawaii Revised Statutes, is  
16 amended to read as follows:

17 **"§706-660 Sentence of imprisonment for class B and C**  
18 **felonies; ordinary terms; discretionary terms.** (1) Except as  
19 provided in subsection (2), a person who has been convicted of a  
20 class B or class C felony may be sentenced to an indeterminate  
21 term of imprisonment except as provided for in section 706-660.1



1 relating to the use of firearms in certain felony offenses and  
2 section 706-606.5 relating to repeat offenders. When ordering  
3 such a sentence, the court shall impose the maximum length of  
4 imprisonment, which shall be as follows:

5 (a) For a class B felony--ten years; and

6 (b) For a class C felony--five years.

7 The minimum length of imprisonment shall be determined by the  
8 [~~Hawaii paroling authority~~] court in accordance with section  
9 706-669.

10 (2) A person who has been convicted of a class B or class  
11 C felony for any offense under part IV of chapter 712 may be  
12 sentenced to an indeterminate term of imprisonment; provided  
13 that this subsection shall not apply to sentences imposed under  
14 sections 706-606.5, 706-660.1, 712-1240.5, 712-1240.8 as that  
15 section was in effect prior to July 1, 2016, 712-1242, 712-1245,  
16 712-1249.5, 712-1249.6, 712-1249.7, and 712-1257.

17 When ordering a sentence under this subsection, the court  
18 shall impose a term of imprisonment, which shall be as follows:

19 (a) For a class B felony--ten years or less, but not less  
20 than five years; and



1 (b) For a class C felony--five years or less, but not less  
2 than one year.

3 The minimum length of imprisonment shall be determined by the  
4 [~~Hawaii paroling authority~~] court in accordance with section  
5 706-669."

6 SECTION 6. Section 706-661, Hawaii Revised Statutes, is  
7 amended to read as follows:

8 "§706-661 **Extended terms of imprisonment.** The court may  
9 sentence a person who satisfies the criteria for any of the  
10 categories set forth in section 706-662 to an extended term of  
11 imprisonment, which shall have a maximum length as follows:

12 (1) For murder in the second degree--life without the  
13 possibility of parole;

14 (2) For a class A felony--indeterminate life term of  
15 imprisonment;

16 (3) For a class B felony--indeterminate twenty-year term  
17 of imprisonment; and

18 (4) For a class C felony--indeterminate ten-year term of  
19 imprisonment.

20 When ordering an extended term sentence, the court shall impose  
21 the maximum length of imprisonment. The minimum length of



1 imprisonment for an extended term sentence under paragraphs (2),  
2 (3), and (4) shall be determined by the [~~Hawaii~~ ~~paroleing~~  
3 ~~authority~~] court in accordance with section 706-669."

4 SECTION 7. Section 706-667, Hawaii Revised Statutes, is  
5 amended by amending subsection (3) to read as follows:

6 "(3) Special term. A young adult defendant convicted of a  
7 felony, in lieu of any other sentence of imprisonment authorized  
8 by this chapter, may be sentenced to a special indeterminate  
9 term of imprisonment if the court is of the opinion that [~~such~~]  
10 the special term is adequate for the young adult defendant's  
11 correction and rehabilitation and will not jeopardize the  
12 protection of the public. When ordering a special indeterminate  
13 term of imprisonment, the court shall impose the maximum length  
14 of imprisonment, which shall be eight years for a class A  
15 felony, five years for a class B felony, and four years for a  
16 class C felony. The minimum length of imprisonment shall be set  
17 by the [~~Hawaii~~ ~~paroleing~~ ~~authority~~] court in accordance with  
18 section 706-669. During this special indeterminate term, the  
19 young adult shall be incarcerated separately from career  
20 criminals, when practicable."



1 SECTION 8. Section 706-669, Hawaii Revised Statutes, is  
2 amended to read as follows:

3 **"§706-669 Procedure for determining minimum term of**  
4 **imprisonment.** (1) When [~~a person has been~~] an offender is  
5 being sentenced to an indeterminate or an extended term of  
6 imprisonment, the [Hawaii paroling authority shall, as soon as  
7 practicable but no later than six months after commitment to the  
8 custody of the director of the department of [public safety]  
9 hold a hearing, and on the basis of the hearing] court, at the  
10 time of sentencing, shall make an order fixing the minimum term  
11 of imprisonment to be served before the [~~prisoner~~] offender  
12 shall become eligible for parole.

13 (2) [~~Before holding the hearing, the authority shall~~  
14 ~~obtain a complete report regarding the prisoner's life before~~  
15 ~~entering the institution and a full report of the prisoner's~~  
16 ~~progress in the institution. The report shall be a complete~~  
17 ~~personality evaluation]~~ When fixing a minimum term of  
18 imprisonment pursuant to subsection (1), the court shall  
19 consider the pre-sentence correctional diagnosis report prepared  
20 under section 706-601 and may consider other appropriate sources  
21 of information for the purpose of determining the [~~prisoner's~~



1 ~~degree of propensity toward criminal activity.] offender's~~  
2 minimum term.

3 ~~[(3) The prisoner shall be given reasonable notice of the~~  
4 ~~hearing under subsection (1) and shall be permitted to be heard~~  
5 ~~by the authority on the issue of the minimum term to be served~~  
6 ~~before the prisoner becomes eligible for parole. In addition,~~  
7 ~~the prisoner shall:~~

8 ~~(a) Be permitted to consult with any persons the prisoner~~  
9 ~~reasonably desires, including the prisoner's own legal~~  
10 ~~counsel, in preparing for the hearing;~~

11 ~~(b) Be permitted to be represented and assisted by counsel~~  
12 ~~at the hearing;~~

13 ~~(c) Have counsel appointed to represent and assist the~~  
14 ~~prisoner if the prisoner so requests and cannot afford~~  
15 ~~to retain counsel; and~~

16 ~~(d) Be informed of the prisoner's rights under~~  
17 ~~[paragraphs] (a), (b), and (c).]~~

18 ~~[(4) The] (3) Independent of the court's determination of~~  
19 the minimum term to be served before the offender becomes  
20 eligible for parole, the Hawaii paroling authority in its  
21 discretion [may], in any particular case and at any time, may



1 impose a special condition that the [~~prisoner~~] offender, once  
2 imprisoned, will not be considered for parole unless and until  
3 the [~~prisoner~~] offender has a record of continuous exemplary  
4 behavior.

5  ~~[(5) After sixty days notice to the prosecuting attorney,~~  
6  ~~the authority in its discretion may reduce the minimum term~~  
7  ~~fixed by its order pursuant to subsection (1).]~~ (4) The  
8 authority in its discretion may reduce a minimum term fixed by  
9 its own order, but only after sixty days notice to the  
10 prosecuting attorney. In no event shall the authority reduce a  
11 minimum term fixed by the court pursuant to subsection (1).

12  ~~[(6) A verbatim stenographic or mechanical record of the~~  
13  ~~hearing shall be made and preserved in transcribed or~~  
14  ~~untranscribed form.~~

15  ~~(7) The State shall have the right to be represented at~~  
16  ~~the hearing by the prosecuting attorney who may present written~~  
17  ~~testimony and make oral comments and the authority shall~~  
18  ~~consider such testimony and comments in reaching its decision.~~  
19  ~~The authority shall notify the prosecuting attorney of the~~  
20  ~~hearing at the time the prisoner is given notice of the hearing.~~  
21  ~~The hearing shall be opened to victims or their designees or~~



1 ~~surviving immediate family members who may present a written~~  
2 ~~statement or make oral comments.~~

3 ~~(8) The authority shall establish guidelines for the~~  
4 ~~uniform determination of minimum sentences, which shall take~~  
5 ~~into account both the nature and degree of the offense of the~~  
6 ~~prisoner and the prisoner's criminal history and character. The~~  
7 ~~guidelines shall be public records and shall be made available~~  
8 ~~to the prisoner and to the prosecuting attorney and other~~  
9 ~~interested government agencies.]"~~

10 SECTION 9. Section 706-670, Hawaii Revised Statutes, is  
11 amended by amending subsection (1) to read as follows:

12 "(1) Parole hearing. A person sentenced to an  
13 indeterminate term of imprisonment shall receive an initial  
14 parole hearing at least one month before the expiration of the  
15 minimum term of imprisonment determined [~~by the Hawaii paroling~~  
16 ~~authority]~~ pursuant to section 706-669. If the person has been  
17 sentenced to multiple terms of imprisonment, the parole hearing  
18 shall not be required until at least one month before the  
19 expiration of the minimum term that expires last in time. A  
20 validated risk assessment shall be used to determine the  
21 person's risk of re-offense and suitability for community



1 supervision. For purposes of this subsection, "validated risk  
2 assessment" means an actuarial tool to determine a person's  
3 likelihood of engaging in future criminal behavior. The  
4 department of public safety shall select a research-based risk  
5 assessment tool and shall validate the accuracy of the risk  
6 assessment tool at least every five years in consultation with  
7 the paroling authority. Assessments shall be performed by  
8 department of public safety staff who are trained in the use of  
9 the risk assessment tool. Except for good cause shown to the  
10 paroling authority, a person who is assessed as low risk for re-  
11 offending shall be granted parole upon completing the minimum  
12 sentence, unless the person:

13 (a) Is found to have an extensive criminal history record  
14 that is indicative of a likelihood of future criminal  
15 behavior in spite of the finding by the risk  
16 assessment by the paroling authority;

17 (b) Is found to have committed misconduct while in prison  
18 that is equivalent to a misdemeanor or felony crime  
19 within thirty-six months of the expiration of the  
20 minimum term of imprisonment;

21 (c) Has any pending felony charges in the State;



1 (d) Is incarcerated for a sexual offense under part V of  
2 chapter 707 or child abuse under part VI of chapter  
3 707; or

4 (e) Does not have a parole plan as set forth under section  
5 706-670(3) and (4), as approved by, and at the  
6 discretion of, the paroling authority.

7 If parole is not granted at the initial parole hearing,  
8 additional hearings shall be held at twelve-month intervals or  
9 less until parole is granted or the maximum period of  
10 imprisonment expires. The State shall have the right to be  
11 represented at the initial parole hearing and all subsequent  
12 parole hearings by the prosecuting attorney, who may present  
13 written testimony and make oral comments. The authority shall  
14 consider the testimony and comments in reaching its decision.  
15 The authority shall notify the appropriate prosecuting attorney  
16 of the hearing at the time the prisoner is given notice of the  
17 hearing."

18 SECTION 10. Section 707-784, Hawaii Revised Statutes, is  
19 amended to read as follows:

20 "[~~§~~§707-784~~§~~] **Extended terms of imprisonment; labor**  
21 **trafficking offenses.** If a person is found guilty of a



1 violation under section 707-781 or 707-782 and the victim of the  
2 offense suffered bodily injury, the person may be sentenced to  
3 an extended indeterminate term of imprisonment as described in  
4 this section. Subject to the procedures set forth in section  
5 706-664, the court may impose, in addition to the indeterminate  
6 term of imprisonment provided for the grade of offense, an  
7 additional indeterminate term of imprisonment as follows:

8 (a) Bodily injury - an additional two years of  
9 imprisonment;

10 (b) Substantial bodily injury - an additional five years  
11 of imprisonment;

12 (c) Serious bodily injury - an additional fifteen years of  
13 imprisonment; or

14 (d) If death results, the defendant shall be sentenced in  
15 accordance with the homicide statute relevant for the  
16 level of criminal intent.

17 When ordering an extended term sentence, the court shall impose  
18 the maximum length of imprisonment. The minimum length of  
19 imprisonment for an extended term sentence under paragraph (a),  
20 (b), (c), or (d) shall be determined by the ~~[Hawaii-pareling~~  
21 ~~authority]~~ court in accordance with section 706-669."



1 SECTION 11. No later than December 1, 2017, the judiciary  
2 shall conduct training for all judges who will be required to  
3 determine an offender's minimum term of imprisonment pursuant to  
4 this Act.

5 SECTION 12. Statutory material to be repealed is bracketed  
6 and stricken. New statutory material is underscored.

7 SECTION 13. This Act shall take effect on January 1, 2018;  
8 provided that:

9 (1) Section 11 shall take effect on July 1, 2017;

10 (2) The amendments made to section 706-670, Hawaii Revised  
11 Statutes, by section 9 of this Act shall not be  
12 repealed when that section is reenacted on July 1,  
13 2018, pursuant to section 14 of Act 139, Session Laws  
14 of Hawaii 2012, as amended by section 2 of Act 67,  
15 Session Laws of Hawaii 2013 and section 69 of Act 231,  
16 Session Laws of Hawaii 2016;

17 (3) This Act shall apply to offenses committed on or after  
18 January 1, 2018, and shall not be construed to confer  
19 a right on any person sentenced before the effective  
20 date of this Act to move a court for reduction of a



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1 minimum term fixed by the Hawaii paroling authority;  
2 and  
3 (4) In cases involving offenses committed before January  
4 1, 2018, the court shall fix the minimum term of  
5 imprisonment in accordance with the amendments made in  
6 section 8 of this Act, if the person is sentenced  
7 after December 31, 2017.  
8

INTRODUCED BY:

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# S.B. NO. 1224

**Report Title:**

Imprisonment; Minimum Terms

**Description:**

Requires judges, instead of the Hawaii paroling authority, to determine the minimum term of imprisonment a convicted offender must serve before becoming eligible for parole.

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

