

JAN 20 2017

A BILL FOR AN ACT

RELATING TO CRIMINAL PROCEDURE.

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

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

3 "§853-1 Deferred acceptance of guilty plea or nolo
4 **contendere plea; discharge and dismissal, expungement of**
5 **records.** (a) Upon proper motion as provided by this chapter:

6 (1) When a defendant voluntarily pleads guilty or nolo
7 contendere, prior to commencement of trial, to a
8 felony, misdemeanor, or petty misdemeanor;

9 (2) It appears to the court that the defendant is not
10 likely again to engage in a criminal course of
11 conduct; and

12 (3) The ends of justice and the welfare of society do not
13 require that the defendant shall presently suffer the
14 penalty imposed by law,

15 the court, without accepting the plea of nolo contendere or
16 entering a judgment of guilt and with the consent of the



1 defendant and after considering the recommendations, if any, of
2 the prosecutor, may defer further proceedings.

3 (b) The proceedings may be deferred upon any of the
4 conditions specified by section 706-624. As a further
5 condition, the court shall impose a compensation fee pursuant to
6 section 351-62.6 and a probation services fee pursuant to
7 section 706-648 upon every defendant who has entered a plea of
8 guilty or nolo contendere to a petty misdemeanor, misdemeanor,
9 or felony; provided that the court shall waive the imposition of
10 a compensation or probation services fee, if it finds that the
11 defendant is unable to pay the compensation or probation
12 services fee. The court may defer the proceedings for a period
13 of time as the court shall direct but in no case to exceed the
14 maximum sentence allowable; provided that, if the defendant has
15 entered a plea of guilty or nolo contendere to a petty
16 misdemeanor, the court may defer the proceedings for a period
17 not to exceed one year. The defendant may be subject to bail or
18 recognizance at the court's discretion during the period during
19 which the proceedings are deferred.

20 (c) Upon the defendant's completion of the period
21 designated by the court and in compliance with the terms and



1 conditions established, the court shall discharge the defendant
2 and dismiss the charge against the defendant.

3 (d) Discharge of the defendant and dismissal of the charge
4 against the defendant under this section shall be without
5 adjudication of guilt, shall eliminate any civil admission of
6 guilt, and is not a conviction.

7 (e) Upon discharge of the defendant and dismissal of the
8 charge against the defendant under this section, the defendant
9 may apply for expungement not less than one year following
10 discharge, pursuant to section 831-3.2.

11 (f) The deferred acceptance of guilty plea and nolo
12 contendere plea shall not be available under this section to any
13 state or county law enforcement officer charged with a felony,
14 misdemeanor, or petty misdemeanor alleged to have been committed
15 by the officer while in the performance of the officer's duties
16 as an officer."

17 SECTION 2. This Act does not affect rights and duties that
18 matured, penalties that were incurred, and proceedings that were
19 begun before its effective date.

20 SECTION 3. New statutory material is underscored.

21



S.B. NO. 567

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

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INTRODUCED BY:

Will Engw
Ann Drayton
[Signature]
[Signature]



S.B. NO. 567

Report Title:

Criminal Procedure; Law Enforcement; No Contest Plea; Deferral; Prohibition

Description:

Prohibits the courts from deferring the acceptance of guilty or no contest pleas that could result in the expungement of the offense from the criminal record of state or county law enforcement officers for felonies, misdemeanors, or petty misdemeanors that the officers are alleged to have committed while in the performance of the duties of an officer.

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

