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## A BILL FOR AN ACT

RELATING TO CRIMES.

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

1           SECTION 1. Section 706-620, Hawaii Revised Statutes, is  
2 amended to read as follows:

3           "**§706-620 Authority to withhold sentence of imprisonment.**

4 A defendant who has been convicted of a crime may be sentenced  
5 to a term of probation unless:

6           (1) The crime is first or second degree murder or  
7 attempted first or second degree murder;

8           (2) The crime is a class A felony, except class A felonies  
9 defined ~~[in]~~:

10           (a) In chapter 712, part IV, but not including any  
11 offense involving the possession of:

12           (i) Methamphetamine, including its salts,  
13 isomers, salts of isomers, and immediate  
14 precursors; or

15           (ii) Fentanyl, including its isomers, esters,  
16 ethers, salts, and salts of isomers; and

17           ~~[by]~~



- 1            (b) By section 707-702;
- 2            (3) The defendant is a repeat offender under section
- 3            706-606.5;
- 4            (4) The defendant is a felony firearm offender as defined
- 5            in section 706-660.1(2);
- 6            (5) The crime involved the death of or the infliction of
- 7            serious or substantial bodily injury upon a child, an
- 8            elder person, or a handicapped person under section
- 9            706-660.2; or
- 10           (6) The crime is cruelty to animals where ten or more pet
- 11           animals were involved under section 711-1108.5 or
- 12           711-1109."

13           SECTION 2. Section 706-622.5, Hawaii Revised Statutes, is

14 amended by amending subsection (1) to read as follows:

15           "(1) Notwithstanding section 706-620(3), a person

16 convicted for the first or second time for any offense under

17 section 329-43.5, except offenses under subsections (a) and (b)

18 of that section which constitute violations, involving the

19 possession or use of drug paraphernalia or any felony offense

20 under part IV of chapter 712 involving the possession or use of

21 any dangerous drug, detrimental drug, harmful drug, intoxicating



1 compound, marijuana, or marijuana concentrate, as defined in  
2 section 712-1240, but not including any offense under part IV of  
3 chapter 712 involving the distribution or manufacture of any  
4 such drugs or substances and not including any methamphetamine  
5 offenses under sections 712-1240.7, 712-1240.8 as that section  
6 was in effect before July 1, 2016, 712-1241, [~~and~~] 712-1242, and  
7 712-1243 and not including any offense involving the possession  
8 of fentanyl, including its isomers, esters, ethers, salts, and  
9 salts of isomers under sections 712-1241, 712-1242, and 712-  
10 1243, is eligible to be sentenced to probation under subsection  
11 (2) if the person meets the following criteria:

12 (a) The court has determined that the person is nonviolent  
13 after reviewing the person's criminal history, the  
14 factual circumstances of the offense for which the  
15 person is being sentenced, and any other relevant  
16 information;

17 (b) The person has been assessed by a certified substance  
18 abuse counselor to be in need of substance abuse  
19 treatment due to dependency or abuse under the  
20 applicable Diagnostic and Statistical Manual and  
21 Addiction Severity Index; and



1 (c) Except for those persons directed to substance abuse  
2 treatment under the supervision of the drug court, the  
3 person presents a proposal to receive substance abuse  
4 treatment in accordance with the treatment plan  
5 prepared by a certified substance abuse counselor  
6 through a substance abuse treatment program that  
7 includes an identified source of payment for the  
8 treatment program."

9 SECTION 3. Section 706-659, Hawaii Revised Statutes, is  
10 amended to read as follows:

11 **"§706-659 Sentence of imprisonment for class A felony.**

12 (1) Notwithstanding part II; sections 706-605, 706-606, 706-  
13 606.5, 706-660.1, 706-661, and 706-662; and any other law to the  
14 contrary, a person who has been convicted of a class A felony,  
15 except class A felonies defined in chapter 712, part IV, or  
16 section 707-702, shall be sentenced to an indeterminate term of  
17 imprisonment of twenty years without the possibility of  
18 suspension of sentence or probation. The minimum length of  
19 imprisonment shall be determined by the Hawaii paroling  
20 authority in accordance with section 706-669.



1       (2) A person who has been convicted of a class A felony  
2 defined in chapter 712, part IV, or section 707-702, may be  
3 sentenced to an indeterminate term of imprisonment, except as  
4 provided for in subsection (3), section 706-660.1 relating to  
5 the use of firearms in certain felony offenses, and section 706-  
6 606.5 relating to repeat offenders. When ordering such a  
7 sentence, the court shall impose the maximum length of  
8 imprisonment which shall be twenty years. The minimum length of  
9 imprisonment shall be determined by the Hawaii paroling  
10 authority in accordance with section 706-669.

11       (3) A person who has been convicted of the class A felony  
12 defined in section 712-1241 based on the possession of:

13       (a) Methamphetamine, including its salts, isomers, salts  
14       of isomers, and immediate precursors; or

15       (b) Fentanyl, including its isomers, esters, ethers,  
16       salts, and salts of isomers,

17 shall be sentenced to an indeterminate term of imprisonment of  
18 twenty years with a mandatory minimum term of imprisonment of no  
19 less than one year."

20       SECTION 4. Section 706-660, Hawaii Revised Statutes, is  
21 amended to read as follows:



1           "**§706-660 Sentence of imprisonment for class B and C**  
2 **felonies; ordinary terms; discretionary terms.** (1) Except as  
3 provided in [~~subsection~~] subsections (2) [~~7~~] and (3), a person  
4 who has been convicted of a class B or class C felony may be  
5 sentenced to an indeterminate term of imprisonment except as  
6 provided for in section 706-660.1 relating to the use of  
7 firearms in certain felony offenses and section 706-606.5  
8 relating to repeat offenders. When ordering such a sentence,  
9 the court shall impose the maximum length of imprisonment which  
10 shall be as follows:

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

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

13 The minimum length of imprisonment shall be determined by the  
14 Hawaii paroling authority in accordance with section 706-669.

15           (2) [A] Except as provided in subsection (3), a person who  
16 has been convicted of a class B or class C felony for any  
17 offense under part IV of chapter 712 may be sentenced to an  
18 indeterminate term of imprisonment; provided that this  
19 subsection shall not apply to sentences imposed under sections  
20 706-606.5, 706-660.1, 712-1240.5, 712-1240.8 as that section was



1 in effect prior to July 1, 2016, 712-1242, 712-1245, 712-1249.5,  
2 712-1249.6, 712-1249.7, and 712-1257.

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

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

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

9 The minimum length of imprisonment shall be determined by the  
10 Hawaii paroling authority in accordance with section 706-669.

11 (3) A person who has been convicted of the class B felony  
12 defined in section 712-1242 or class C felony defined in section  
13 712-1243 based on the possession of:

14 (a) Methamphetamine, including its salts, isomers, salts  
15 of isomers, and immediate precursors; or

16 (b) Fentanyl, including its isomers, esters, ethers,  
17 salts, and salts of isomers,

18 shall be sentenced to an indeterminate term of imprisonment.

19 When ordering such a sentence, the court shall impose the

20 maximum length of imprisonment of ten years for the class B



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1 felony and five years for the class C felony, with a mandatory  
2 minimum term of imprisonment of no less than one year."

3 SECTION 5. This Act does not affect rights and duties that  
4 matured, penalties that were incurred, and proceedings that were  
5 begun before its effective date.

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

8 SECTION 7. This Act shall take effect upon its approval.

9

INTRODUCED BY:

Dan Holt

JAN 19 2023





# H.B. NO. 265

**Report Title:**

Imprisonment; Mandatory Minimum; Methamphetamine; Fentanyl

**Description:**

Establishes a mandatory minimum term of imprisonment for persons convicted of offenses based on the possession of methamphetamine and fentanyl.

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

