
A BILL FOR AN ACT

RELATING TO SENTENCING.

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

1 SECTION 1. The legislature finds that there are
2 circumstances in which a sentencing court may find that a term
3 of probation would be more appropriate than an indeterminate
4 term of incarceration or a mandatory term of jail. However,
5 existing law requires sentencing courts to impose mandatory
6 minimum sentences for repeat offenders, limiting judicial
7 discretion.

8 The legislature further finds that, in the interest of
9 rehabilitation, courts have delayed sentencing to allow
10 defendants to complete substance abuse and other rehabilitative
11 programs, and have attempted to reduce mandatory minimum
12 sentences to facilitate rehabilitation outside of incarceration.
13 Despite these efforts, defendants are still subject to
14 indeterminate incarceration and must seek release through the
15 Hawaii paroling authority. Serving an indeterminate term as a
16 sentenced felon can have detrimental effects on individuals who
17 have demonstrated rehabilitation.

1 The legislature also finds that providing a narrow,
2 discretionary exception for certain class C felony cases would
3 promote just and fair adjudication and align with best practices
4 for addressing substance addiction. This exception would
5 require specific judicial findings, including that the defendant
6 is not a danger to public safety, would benefit from probation
7 with appropriate terms and conditions, and would serve a period
8 of jail time as a condition of probation.

9 The legislature additionally finds that allowing probation
10 in select cases will reduce incarceration costs and support
11 rehabilitation, enabling defendants to reintegrate as
12 contributing members of society. Furthermore, courts will still
13 have the option to re-sentence defendants if they fail to
14 successfully complete probation or violate the terms and
15 conditions of probation.

16 The purpose of this Act is to amend repeat offender
17 sentencing provisions to allow judges, under certain
18 circumstances, to sentence defendants in class C felony cases to
19 probation with appropriate terms and conditions.

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

- 1 "§706-606.5 Sentencing of repeat offenders. (1)
2 ~~[Notwithstanding]~~ Except as provided in subsection (8), and
3 ~~notwithstanding~~ section 706-669 and any other law to the
4 contrary, any person convicted of murder in the second degree,
5 any class A felony, any class B felony, or any of the following
6 class C felonies:
- 7 (a) Section 134-7 relating to persons prohibited from
8 owning, possessing, or controlling firearms or
9 ammunition;
- 10 (b) Section 134-8 relating to ownership, etc., of certain
11 prohibited weapons;
- 12 (c) Section 134-17 only as it relates to providing false
13 information or evidence to obtain a permit under
14 section 134-9;
- 15 (d) Section 188-23 relating to possession or use of
16 explosives, electrofishing devices, and poisonous
17 substances in state waters;
- 18 (e) Section 386-98(d)(1) relating to fraud violations and
19 penalties;
- 20 (f) Section 431:2-403(b)(2) relating to insurance fraud;

- 1 (g) Section 707-703 relating to negligent homicide in the
2 second degree;
- 3 (h) Section 707-711 relating to assault in the second
4 degree;
- 5 (i) Section 707-713 relating to reckless endangering in
6 the first degree;
- 7 (j) Section 707-716 relating to terroristic threatening in
8 the first degree;
- 9 (k) Section 707-721 relating to unlawful imprisonment in
10 the first degree;
- 11 (l) Section 707-732 relating to sexual assault in the
12 third degree;
- 13 (m) Section 707-752 relating to promoting child abuse in
14 the third degree;
- 15 (n) Section 707-757 relating to electronic enticement of a
16 child in the second degree;
- 17 (o) Section 707-766 relating to extortion in the second
18 degree;
- 19 (p) Section 708-811 relating to burglary in the second
20 degree;



- 1 (q) Section 708-821 relating to criminal property damage
- 2 in the second degree;
- 3 (r) Section 708-831 relating to theft in the second
- 4 degree;
- 5 (s) Section 708-835.5 relating to theft of livestock;
- 6 (t) Section 708-836 relating to unauthorized control of a
- 7 propelled vehicle in the first degree;
- 8 (u) Section 708-839.55 relating to unauthorized possession
- 9 of confidential personal information;
- 10 (v) Section 708-839.8 relating to identity theft in the
- 11 third degree;
- 12 (w) Section 708-852 relating to forgery in the second
- 13 degree;
- 14 (x) Section 708-854 relating to criminal possession of a
- 15 forgery device;
- 16 (y) Section 708-875 relating to trademark counterfeiting;
- 17 (z) Section 709-906(8), (9), or (10) relating to abuse of
- 18 family or household members;
- 19 (aa) Section 710-1071 relating to intimidating a witness;
- 20 (bb) Section 711-1103 relating to riot;



1 [+] (cc) [+] Section 712-1224 relating to possession of
2 gambling records in the first degree;
3 [+] (dd) [+] Section 712-1247 relating to promoting a
4 detrimental drug in the first degree; or
5 [+] (ee) [+] Section 846E-9 relating to failure to comply with
6 covered offender registration requirements,
7 or who is convicted of attempting to commit murder in the second
8 degree, any class A felony, any class B felony, or any of the
9 class C felony offenses enumerated above and who has a prior
10 conviction or prior convictions for the following felonies,
11 including an attempt to commit the same: murder, murder in the
12 first or second degree, a class A felony, a class B felony, any
13 of the class C felony offenses enumerated above, or any felony
14 conviction of another jurisdiction, shall be sentenced to a
15 mandatory minimum period of imprisonment without possibility of
16 parole as provided in subsection (2).

17 (2) A mandatory minimum period of imprisonment without
18 possibility of parole during that period shall be imposed
19 pursuant to subsection (1), as follows:

20 (a) One prior felony conviction:



- 1 (i) Where the instant conviction is for murder in the
- 2 second degree or attempted murder in the second
- 3 degree--ten years;
- 4 (ii) Where the instant conviction is for a class A
- 5 felony--six years, eight months;
- 6 (iii) Where the instant conviction is for a class B
- 7 felony--three years, four months; and
- 8 (iv) Where the instant conviction is for a class C
- 9 felony offense enumerated above--one year, eight
- 10 months;
- 11 (b) Two prior felony convictions:
- 12 (i) Where the instant conviction is for murder in the
- 13 second degree or attempted murder in the second
- 14 degree--twenty years;
- 15 (ii) Where the instant conviction is for a class A
- 16 felony--thirteen years, four months;
- 17 (iii) Where the instant conviction is for a class B
- 18 felony--six years, eight months; and
- 19 (iv) Where the instant conviction is for a class C
- 20 felony offense enumerated above--three years,
- 21 four months; and



- 1 (c) Three or more prior felony convictions:
 - 2 (i) Where the instant conviction is for murder in the
 - 3 second degree or attempted murder in the second
 - 4 degree--thirty years;
 - 5 (ii) Where the instant conviction is for a class A
 - 6 felony--twenty years;
 - 7 (iii) Where the instant conviction is for a class B
 - 8 felony--ten years; and
 - 9 (iv) Where the instant conviction is for a class C
 - 10 felony offense enumerated above--five years.
- 11 (3) Except as provided in subsection (4), a person shall
- 12 not be sentenced to a mandatory minimum period of imprisonment
- 13 under this section unless the instant felony offense was
- 14 committed during the period as follows:
 - 15 (a) Within twenty years after a prior felony conviction
 - 16 where the prior felony conviction was for murder in
 - 17 the first degree or attempted murder in the first
 - 18 degree;
 - 19 (b) Within twenty years after a prior felony conviction
 - 20 where the prior felony conviction was for murder in



1 the second degree or attempted murder in the second
2 degree;

3 (c) Within twenty years after a prior felony conviction
4 where the prior felony conviction was for a class A
5 felony;

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

8 (e) Within five years after a prior felony conviction
9 where the prior felony conviction was for a class C
10 felony offense enumerated above; or

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

13 (4) If a person was sentenced for a prior felony
14 conviction to a special term under section 706-667, then the
15 person shall not be sentenced to a mandatory minimum period of
16 imprisonment under this section unless the instant felony
17 offense was committed during that period as follows:

18 (a) Within eight years after a prior felony conviction
19 where the prior felony conviction was for a class A
20 felony;



1 (b) Within five years after the prior felony conviction
2 where the prior felony conviction was for a class B
3 felony; or

4 (c) Within four years after the prior felony conviction
5 where the prior felony conviction was for a class C
6 felony offense enumerated above.

7 (5) Notwithstanding any other law to the contrary, any
8 person convicted of any of the following misdemeanor offenses:

9 (a) Section 707-712 relating to assault in the third
10 degree;

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

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

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

17 (e) Section 708-832 relating to theft in the third degree;
18 [~~and~~] or

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



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

10 (6) The sentencing court may impose the above sentences
11 consecutive to any sentence imposed on the defendant for a prior
12 conviction, but the sentence shall be imposed concurrent to the
13 sentence imposed for the instant conviction. The court may
14 impose a lesser mandatory minimum period of imprisonment without
15 possibility of parole than that mandated by this section where
16 the court finds that strong mitigating circumstances warrant the
17 action. Strong mitigating circumstances shall include, but
18 shall not be limited to, the provisions of section 706-621. The
19 court shall provide a written opinion stating its reasons for
20 imposing the lesser sentence.

1 (7) A person who is imprisoned in a correctional
2 institution pursuant to subsection (1) shall not be paroled
3 [~~prior to~~] before the expiration of the mandatory minimum term
4 of imprisonment imposed pursuant to subsection (1).

5 (8) Notwithstanding the provisions of this section, in any
6 case to which this section applies, the sentencing court may
7 sentence the defendant to a term of probation after considering
8 section 706-621 and making the following findings:

9 (a) The offense for which the defendant is to be sentenced
10 is one of the class C felonies enumerated above;

11 (b) The defendant would benefit from probation supervision
12 and appropriate terms and conditions;

13 (c) The defendant does not pose a serious danger to public
14 safety; and

15 (d) Imposing an indeterminate term of imprisonment with a
16 mandatory minimum jail sentence would pose a hardship
17 on the defendant or on those that depend on the
18 defendant for support.

19 Any sentence of probation shall include a term of
20 imprisonment within the parameters of section 706-624(2)(a), as
21 a special condition of probation.

1 If the defendant fails to complete the term of probation to
2 which the defendant is sentenced, or the court finds upon proper
3 motion and adjudication that the defendant has violated a
4 substantial term or condition of probation, the court may re-
5 sentence the defendant to the indeterminate term of imprisonment
6 with the mandatory minimum term of imprisonment that could have
7 been imposed at the time of the original sentencing.

8 [~~8~~] (9) For the purposes of this section:

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

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

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

17 SECTION 3. Section 706-620, Hawaii Revised Statutes, is
18 amended to read as follows:

19 "**§706-620 Authority to withhold sentence of imprisonment.**

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

- 1 (1) The crime is first or second degree murder or
2 attempted first or second degree murder;
- 3 (2) The crime is a class A felony, except class A felonies
4 defined in chapter 712, part IV, and by section
5 707-702;
- 6 (3) The defendant is a repeat offender under section
7 706-606.5; provided that the court may invoke section
8 706-606.5(8) in sentencing the defendant;
- 9 (4) The defendant is a felony firearm offender as defined
10 in section 706-660.1(2);
- 11 (5) The crime involved the death of or the infliction of
12 serious or substantial bodily injury upon a child, an
13 elder person, or a handicapped person under section
14 706-660.2; or
- 15 (6) The crime is cruelty to animals where ten or more pet
16 animals were involved under section 711-1108.5 or
17 711-1109."

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

20 SECTION 5. This Act shall take effect on July 1, 2050.



S.B. NO. 2749
S.D. 1

Report Title:

Penal Code; Sentencing; Repeat Offenders; Probation

Description:

Amends repeat offender sentencing provisions to allow sentencing courts, under certain circumstances, to sentence defendants in class C felony cases to probation with appropriate terms and conditions. Effective 7/1/2050. (SD1)

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