

ACT 57

S.B. NO. 2670

A Bill for an Act Relating to the Penal Code.

Be It Enacted by the Legislature of the State of Hawaii:

SECTION 1. Section 706-660.1, Hawaii Revised Statutes, is amended to read as follows:

“§706-660.1 Sentence of imprisonment for use of a firearm, semiautomatic firearm, or automatic firearm in a felony. [(a)] (1) A person convicted of a felony, where the person had a firearm in his possession or threatened its use or used the firearm while engaged in the commission of the felony, whether the

firearm was loaded or not, and whether operable or not, may in addition to the indeterminate term of imprisonment provided for the grade of offense be sentenced to a mandatory minimum term of imprisonment without possibility of parole or probation the length of which shall be as follows:

- [(1)] (a) For murder in the second degree and attempted murder in the second degree—up to fifteen years;
- [(2)] (b) For a class A felony—up to ten years;
- [(3)] (c) For a class B felony—up to five years; and
- [(4)] (d) For a class C felony—up to three years.

The sentence of imprisonment for a felony involving the use of a firearm as provided in []this[] subsection shall not be subject to the procedure for determining a minimum term of imprisonment prescribed under section []706-669[]; provided further that a person who is imprisoned in a correctional institution as provided in this subsection shall become subject to the parole procedure as prescribed in section 706-670 only upon¹ expiration of the term of mandatory imprisonment fixed under [(a)(1), (2), (3), or (4), herein.] paragraph (a), (b), (c), or (d).

[(b)] (2) A person convicted of a second firearm felony offense as provided in subsection [(a), herein.] (1) where the person had a firearm in his possession or threatened its use or used the firearm while engaged in the commission of the felony, whether the firearm was loaded or not, and whether operable or not, shall in addition to the indeterminate term of imprisonment provided for the grade of offense be sentenced to a mandatory minimum term of imprisonment without possibility of parole or probation the length of which shall be as follows:

- [(1)] (a) For murder in the second degree and attempted murder in the second degree—twenty years;
- [(2)] (b) For a class A felony—thirteen years, four months;
- [(3)] (c) For a class B felony—six years, eight months; and
- [(4)] (d) For a class C felony—three years, four months.

The sentence of imprisonment for a second felony offense involving the use of a firearm as provided in this subsection shall not be subject to the procedure for determining a minimum term of imprisonment prescribed under section 706-669[]; provided further that a person who is imprisoned in a correctional institution as provided in this subsection shall become subject to the parole procedure as prescribed in section 706-670 only upon the expiration of the term of mandatory imprisonment fixed under [(a)(1), (2), (3), or (4), herein.] paragraph (a), (b), (c), or (d).

[(c)] (3) A person convicted of a felony, where the person had a semiautomatic firearm or automatic firearm in his possession or used or threatened its use while engaged in the commission of the felony, whether the semiautomatic firearm or automatic firearm was loaded or not, and whether operable or not, shall in addition to the indeterminate term of imprisonment provided for the grade of offense be sentenced to a mandatory minimum term of imprisonment without possibility of parole or probation the length of which shall be as follows:

- [(1)] (a) For murder in the second degree and attempted murder in the second degree—twenty years;
- [(2)] (b) For a class A felony—fifteen years;
- [(3)] (c) For a class B felony—ten years; and
- [(4)] (d) For a class C felony—five years.

The sentence of imprisonment for a felony involving the use of a semiautomatic firearm or automatic firearm as provided in this subsection shall not be subject to the procedure for determining a minimum term of imprisonment prescribed under section 706-669[]; provided further that a person who is imprisoned in a correctional institution as provided []in[] this subsection shall become subject to the

parole procedure as prescribed in section 706-670 only upon¹ expiration of the term of mandatory imprisonment fixed under [(a)(1)², (2), (3), or (4), herein.] paragraph (a), (b), (c), or (d).

[(d)] (4) In this section:

- [(1)] (a) "Firearm" has the same meaning defined in section 134-1 except that it does not include "semiautomatic firearm" or "automatic firearm."
- [(2)] (b) "Automatic firearm" has the same meaning defined in section 134-1.
- [(3)] (c) "Semiautomatic firearm" means any firearm that uses the energy of the explosive in a fixed cartridge to extract a fired cartridge and chamber a fresh cartridge with each single pull of [a] the trigger."

SECTION 2. Section 712-1222.5, Hawaii Revised Statutes, is amended to read as follows:

"[§712-1222.5] Promoting gambling aboard ships. [(a)] (1) A person commits the offense of promoting gambling aboard ships if he knowingly advances or profits from gambling activity by:

- [(1)] (a) Managing, supervising, controlling, operating, or owning, either alone or in association with others, a gambling ship;
- [(2)] (b) Managing, supervising, controlling, operating, or owning, either alone or in association with others, any craft which embarks from any point within the State, and disembarks at the same or another point within the State, during which the person intentionally causes or knowingly permits gambling activity to be conducted, whether within or without the waters of the State; or
- [(3)] (c) Transporting, conveying, or carrying any person to [any] a gambling ship or a craft described in [subsection (1)(b).] paragraph (b).

[(b)] (2) In this section:

- [(1)] (a) "Craft" includes every boat, ship, vessel, barge, hulk, or other thing capable of floating; and
- [(2)] (b) "Gambling ship" means any craft kept, operated, or maintained for the purpose of gambling, whether within or without the waters of the State³ and whether it is anchored, moored, lying to, or navigating.

[(c)] (3) This section shall not apply to gambling activity conducted during travel from foreign nations or [the continental] another state or territory of the United States to the point of first entry into State waters or during travel to foreign nations or [the continental] another state or territory of the United States from the point of final exit from State waters; provided that nothing herein shall preclude prosecution for any⁴ offense under this part.

[(d)] (4) Promoting gambling aboard ships is a class C felony."

SECTION 3. Section 712-1230, Hawaii Revised Statutes, is amended to read as follows:

"§712-1230 Forfeiture of property used in illegal gambling. Any gambling device, paraphernalia used on fighting animals, or birds, implements, furniture, personal property, vehicles, vessels, aircraft, or gambling record possessed or used in violation of [a section in] this part, or any money or personal property used as a bet or stake in gambling activity in violation of [a section in] this part, may be ordered forfeited to the State, subject to the requirements of chapter

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712A[, where the evidence satisfies the court by its preponderance that the owner allowed the illegal use of the owner's property].”

SECTION 4. Statutory material to be repealed is bracketed. New statutory material is underscored.

SECTION 5. This Act shall take effect upon its approval.

(Approved April 29, 1992.)

Notes

1. Prior to amendment “the” appeared here.
2. Prior to amendment “(c)(1)” appeared here.
3. Prior to amendment “,” appeared here.
4. Prior to amendment “other” appeared here.