

ACT 33

S.B. NO. 616

A Bill for an Act Relating to Hate Crimes.

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

SECTION 1. Section 846-51, Hawaii Revised Statutes, is amended by adding a new definition to be appropriately inserted and to read as follows:

““Gender identity or expression” includes a person’s actual or perceived gender, as well as a person’s gender identity, gender-related self image, gender-related appearance, or gender-related expression; regardless of whether that gender identity, gender-related self image, gender-related appearance, or gender-related expression is different from that traditionally associated with the person’s sex at birth.”

SECTION 2. Section 706-662, Hawaii Revised Statutes, is amended to read as follows:

“§706-662 Criteria for extended terms of imprisonment. A convicted defendant may be subject to an extended term of imprisonment under section 706-661, if the convicted defendant satisfies one or more of the following criteria:

- (1) The defendant is a persistent offender whose imprisonment for an extended term is necessary for protection of the public. The court shall not make this finding unless the defendant has previously been convicted of two felonies committed at different times when the defendant was eighteen years of age or older.
- (2) The defendant is a professional criminal whose imprisonment for an extended term is necessary for protection of the public. The court shall not make this finding unless:
 - (a) The circumstances of the crime show that the defendant has knowingly engaged in criminal activity as a major source of livelihood; or

- (b) The defendant has substantial income or resources not explained to be derived from a source other than criminal activity.
- (3) The defendant is a dangerous person whose imprisonment for an extended term is necessary for protection of the public. The court shall not make this finding unless the defendant has been subjected to a psychiatric or psychological evaluation that documents a significant history of dangerousness to others resulting in criminally violent conduct, and this history makes the defendant a serious danger to others. Nothing in this section precludes the introduction of victim-related data in order to establish dangerousness in accord with the Hawaii rules of evidence.
- (4) The defendant is a multiple offender whose criminal actions were so extensive that a sentence of imprisonment for an extended term is necessary for protection of the public. The court shall not make this finding unless:
- (a) The defendant is being sentenced for two or more felonies or is already under sentence of imprisonment for felony; or
- (b) The maximum terms of imprisonment authorized for each of the defendant's crimes, if made to run consecutively, would equal or exceed in length the maximum of the extended term imposed[,] or would equal or exceed forty years if the extended term imposed is for a class A felony.
- (5) The defendant is an offender against the elderly, handicapped, or a minor under the age of eight, whose imprisonment for an extended term is necessary for the protection of the public. The court shall not make this finding unless:
- (a) The defendant attempts or commits any of the following crimes: murder, manslaughter, a sexual offense that constitutes a felony under chapter 707, robbery, felonious assault, burglary, or kidnapping; and
- (b) The defendant, in the course of committing or attempting to commit the crime, inflicts serious or substantial bodily injury upon a person who is:
- (i) Sixty years of age or older;
- (ii) Blind, a paraplegic, or a quadriplegic; or
- (iii) Eight years of age or younger; and
- (c) Such disability is known or reasonably should be known to the defendant.
- (6) The defendant is a hate crime offender whose imprisonment for an extended term is necessary for the protection of the public. The court shall not make this finding unless:
- (a) The defendant is convicted of a crime under chapter 707, 708, or 711; and
- (b) The defendant intentionally selected a victim, or in the case of a property crime, the property that was the object of a crime, because of hostility toward the actual or perceived race, religion, disability, ethnicity, national origin, gender identity or expression, or sexual orientation of any person. For purposes of this subsection, "gender identity or expression" includes a person's actual or perceived gender, as well as a person's gender identity, gender-related self image, gender-related appearance, or gender-related expression; regardless of whether that gender identity, gender-related self image, gender-related appearance, or gender-related expression is different from that traditionally associated with the person's sex at birth."

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SECTION 3. Section 846-51, Hawaii Revised Statutes, is amended by amending the definition of "hate crime" to read as follows:

"Hate crime" means any criminal act in which the perpetrator intentionally selected a victim, or in the case of a property crime, the property that was the object of a crime, because of hostility toward the actual or perceived race, religion, disability, ethnicity, national origin, gender identity or expression, or sexual orientation of any person."

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

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

SECTION 6. This Act shall take effect upon its approval.

Note

(Became law on April 23, 2003, without the Governor's signature, pursuant to Art. III, §16, State Constitution.)