

## ACT 280

S.B. NO. 68

A Bill for an Act Relating to Sentencing.

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

SECTION 1. The legislature finds that since the enactment of mandatory minimum sentencing for drug users, the Federal Bureau of Prisons budget increased from \$220,000,000 in 1986 to \$5,400,000,000 in 2008. From 2000 to 2009, appropriations for the Hawaii department of public safety increased ninety per cent, from \$128,000,000 to \$243,000,000. Mandatory minimum sentences are statutorily prescribed terms of imprisonment that automatically attach upon conviction of certain criminal conduct, usually pertaining to drug or firearm offenses. Absent very narrow criteria for relief, a sentencing judge is powerless to mandate a term of imprisonment below the mandatory minimum. Mandatory minimum sentences for drug offenses rely solely upon the weight of the substance as a proxy for the degree of involvement of a defendant's role. Nationwide, mandatory minimum sentences have consistently been shown to have a disproportionate impact on persons of color. The United States Sentencing Commission, in a fifteen-year overview of the federal sentencing system, concluded that "mandatory penalty statutes are used inconsistently" and disproportionately affect African American and other defendants of color. As a result, drug defendants of color are twenty per cent more likely to be sentenced to prison than white drug defendants. The department of public safety reports that Native Hawaiians comprise thirty-nine to forty per cent of Hawaii's incarcerated population, while they represent only twenty-four per cent of the general population. According to the United States Department of Justice, the time spent in prison does not affect recidivism rates. Government surveys document that drug use is fairly consistent across racial and ethnic groups.

In the Anti-Drug Abuse Act of 1986, Congress structured anti-drug penalties to encourage the Department of Justice to concentrate its enforcement effort against high-level and major-level drug traffickers, and provided new, long mandatory minimum sentences for such offenders, correctly recognizing the federal role in the combined federal-state drug enforcement effort. Hawaii's criminal justice approach to drug use is a significant contributor to the total number of people admitted to prison or jail. For example, in 2009 approximately two thousand persons were arrested for drug offenses in Hawaii, with seven hundred twenty-six persons sentenced to incarceration. Of the seven hundred twenty-six

persons incarcerated, thirty-two per cent were Native Hawaiians. According to the 2004 State of Hawaii treatment needs assessment program dataset, Native Hawaiians do not use drugs at widely dissimilar rates to other races or ethnicities.

The legislature further finds that linking drug quantity with punishment severity has had a particularly profound impact on women, who are more likely to play peripheral roles in a drug enterprise than men. However, because prosecutors can attach drug quantities to an individual regardless of the level of culpability of a defendant's participation in the charged offense, women have been exposed to increasingly punitive sentences. In 2000, the department of public safety reported that more than fifty-six per cent of Hawaii's incarcerated women were sentenced to mandatory prison terms. Low-level and mid-level drug offenders can be adequately prosecuted by the states and punished or supervised in treatment programs, as appropriate. Research has shown that community-based drug treatment is more effective both in economic and social terms than incarceration. Studies have estimated savings from \$10 to \$18 for every \$1 spent on community-based treatment.

It is widely acknowledged that the decades-long war on drugs is a failure. Federal and state drug enforcement resources are not being properly focused against high-level traffickers. In May 2007, the United States Sentencing Commission issued a report to Congress, stating that "[t]he majority of federal cocaine offenders generally perform low-level functions." In discussing drug abuse, the Director of the National Institute on Drug Abuse has stated, "This aberrant behavior has traditionally been viewed as bad 'choices' that are made voluntarily by the addict. However, recent studies have shown that repeated drug use leads to long-lasting changes in the brain that undermine voluntary control."

The purpose of this Act is to grant sentencing courts the discretion to sentence a defendant convicted in a class B or class C felony drug case to a prison sentence of a length appropriate to the defendant's particular offense and underlying circumstances.

SECTION 2. Section 706-660, Hawaii Revised Statutes, is amended to read as follows:

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

[(1)] (a) For a class B felony—[10] ten years; and

[(2)] (b) For a class C felony—[5] five years.

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

(2) A person who has been convicted of a class B or class C felony for any offense under part IV of chapter 712 may be sentenced to an indeterminate term of imprisonment; provided that this subsection shall not apply to sentences imposed under sections 706-606.5, 706-660.1, 712-1240.5, 712-1240.8, 712-1242, 712-1245, 712-1249.5, 712-1249.6, 712-1249.7, and 712-1257.

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

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

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

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

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

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

SECTION 5. This Act shall take effect on July 1, 2013.

(Became law on July 9, 2013, without the governor's signature, pursuant to Art. III, §16, State Constitution.)