

ACT 114

H.B. NO. 1926

A Bill for an Act Relating to Crime.

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

SECTION 1. Section 706-606.5, Hawaii Revised Statutes, is amended by amending subsection (1) to read as follows:

“(1) Notwithstanding section 706-669 and any other law to the contrary, any person convicted of murder in the second degree, any class A felony, any class B felony, or any of the following class C felonies: section 134-7 relating to persons prohibited from owning, possessing, or controlling firearms or ammunition; section 134-8 relating to ownership, etc., of certain prohibited weapons; section 134-17 only as it relates to providing false information or evidence to obtain a permit under section 134-9; section 188-23 relating to possession or use of explosives, electrofishing devices, and poisonous substances in state waters; section 386-98(d)(1) relating to fraud violations and penalties; section 431:2-403(b)(2) relating to insurance fraud; section 707-703 relating to negligent homicide in the second degree; section 707-711 relating to assault in the second degree; section 707-713 relating to reckless endangering in the first degree; section 707-716 relating to terroristic threatening in the first degree; section 707-721 relating to unlawful imprisonment in the first degree; section 707-732 relating to sexual assault [or rape] in the third degree; section 707-752 relating to promoting child abuse in the third degree; section 707-757 relating to electronic enticement of a child in the second degree; section 707-766 relating to extortion in the second degree; section 708-811 relating to burglary in the second degree; section 708-821 relating to criminal property damage in the second degree; [section 708-831 relating to theft in the first degree as amended by Act 68, Session Laws of Hawaii 1981;] section 708-831 relating to theft in the second degree; section 708-835.5 relating to theft of livestock; section 708-836 relating to unauthorized control of propelled vehicle; section 708-839.55 relating to unauthorized possession of confidential personal information; section 708-839.8 relating to identity theft in the third degree; [section 708-839.55 relating to unauthorized possession of confidential personal information;] section 708-852 relating to forgery in the second degree; section 708-854 relating to criminal possession of a forgery device; section 708-875 relating to trademark counterfeiting; section 710-1071 relating to intimidating a witness; section 711-1103 relating to riot; [section 712-1203 relating to promoting prostitution in the second degree;] section 712-1221 relating to promoting gambling in the first degree; section 712-1224 relating to possession of gambling records in the first degree; section 712-1243 relating to promoting a dangerous drug in the third degree; section 712-1247 relating to promoting a detrimental drug in the first degree; section 846E-9 relating to failure to comply with covered offender registration requirements; ~~section 134-7 relating to ownership or possession of firearms or ammunition by persons convicted of certain crimes; section 134-8 relating to ownership, etc., of prohibited weapons; section 134-9 relating to permits to carry~~, or who is convicted of attempting to commit murder in the second degree, any class A felony, any class B felony, or any of the class C felony offenses enumerated above and who has a prior conviction or prior convictions for the following felonies, including an attempt to commit the same: murder, murder in the first or second degree, a class A felony, a class B felony, any of the class C felony offenses enumerated above, or any felony conviction of another jurisdiction, shall be sentenced to a mandatory minimum period of imprisonment without possibility of parole during such period as follows:

- (a) One prior felony conviction:

- (i) Where the instant conviction is for murder in the second degree or attempted murder in the second degree—ten years;
- (ii) Where the instant conviction is for a class A felony—six years, eight months;
- (iii) Where the instant conviction is for a class B felony—three years, four months; and
- (iv) Where the instant conviction is for a class C felony offense enumerated above—one year, eight months;
- (b) Two prior felony convictions:
 - (i) Where the instant conviction is for murder in the second degree or attempted murder in the second degree—twenty years;
 - (ii) Where the instant conviction is for a class A felony—thirteen years, four months;
 - (iii) Where the instant conviction is for a class B felony—six years, eight months; and
 - (iv) Where the instant conviction is for a class C felony offense enumerated above—three years, four months;
- (c) Three or more prior felony convictions:
 - (i) Where the instant conviction is for murder in the second degree or attempted murder in the second degree—thirty years;
 - (ii) Where the instant conviction is for a class A felony—twenty years;
 - (iii) Where the instant conviction is for a class B felony—ten years; and
 - (iv) Where the instant conviction is for a class C felony offense enumerated above—five years.”

SECTION 2. Section 706-606.6, Hawaii Revised Statutes, is amended to read as follows:

“§706-606.6 Repeat violent and sexual offender; enhanced sentence. (1) Notwithstanding any other provision of law to the contrary, any person who is convicted of an offense under section 707-701.5, 707-702, 707-730, 707-731, 707-732, 707-733.6, 707-750, [☒] 708-840, 712-1202, 712-1203, or 712-1209.1, after having been convicted on at least three prior and separate occasions of an offense under section 707-701.5, 707-702, 707-710, 707-711, 707-730, 707-731, 707-732, 707-733.6, 707-750, [☒] 708-840, 712-1202, 712-1203, or 712-1209.1, or of an offense under federal law or the laws of another state that is comparable to an offense under section 707-701.5, 707-702, 707-710, 707-711, 707-730, 707-731, 707-732, 707-733.6, 707-750, [☒] 708-840, 712-1202, 712-1203, or 712-1209.1, shall be sentenced to an extended term of imprisonment as provided in section 706-661.

(2) A conviction shall not be considered a prior offense unless the conviction occurred within the following time periods:

- (a) For an offense under section 707-701.5, 707-702, 707-730, 707-733.6, 707-750, [☒] 708-840, 712-1202, 712-1203, or 712-1209.1, within the past twenty years from the date of the instant offense;
- (b) For an offense under section 707-710 or 707-731, within the past ten years from the date of the instant offense;
- (c) For an offense under section 707-711 or 707-732, within the past five years from the date of the instant offense; or
- (d) For an offense under federal law or the laws of another state that is comparable to an offense under section 707-701.5, 707-702, 707-710, 707-711, 707-730, 707-731, 707-732, 707-733.6, 707-750, [☒]

708-840, 712-1202, 712-1203, or 712-1209.1, within the maximum term of imprisonment possible under the appropriate jurisdiction.”

SECTION 3. Section 712-1200, Hawaii Revised Statutes, is amended as follows:

1. By amending subsection (2) to read:
“(2) As used in subsection (1), “sexual conduct” means “sexual penetration,” “deviate sexual intercourse,” or “sexual contact,” as those terms are defined in section 707-700[-], or “sodomasochistic abuse” as defined in section 707-752.”
2. By amending subsection (5) to read:
“(5) This section shall not apply to any member of a police department, a sheriff, or a law enforcement officer acting in the course and scope of duties[-], unless engaged in sexual penetration or sodomasochistic abuse.”

SECTION 4. Section 712-1209.1, Hawaii Revised Statutes, is amended to read as follows:

~~“[§712-1209.1] Solicitation of a minor for prostitution.~~ (1) A person eighteen years of age or older commits the offense of solicitation of a minor for prostitution if the person intentionally, knowingly, or recklessly offers or agrees to pay a fee to a minor or to a member of a police department, a sheriff, or a law enforcement officer who represents that person’s self as a minor to engage in sexual conduct.

(2) Solicitation of a minor for prostitution is a class C felony.

(3) A person convicted of committing the offense of solicitation of a minor for prostitution shall be imposed a fine of not less than ~~[\$2,000;]~~ \$5,000; provided that ~~[\$2,000]~~ \$5,000 of the imposed fine shall be credited to the general fund.

(4) This section shall not apply to any member of a police department, a sheriff, or a law enforcement officer who offers or agrees to pay a fee to a minor while acting in the course and scope of duties.

(5) The state of mind requirement for this offense is not applicable to the fact that the person solicited was a minor. A person is strictly liable with respect to the attendant circumstance that the person solicited was a minor.

~~[(4)]~~ (6) For purposes of this section:

“Minor” means a person who is less than eighteen years of age.

“Sexual conduct” has the same meaning as in section 712-1200(2).”

SECTION 5. Section 853-4, Hawaii Revised Statutes, is amended by amending subsection (a) to read as follows:

“(a) This chapter shall not apply when:

- (1) The offense charged involves the intentional, knowing, reckless, or negligent killing of another person;
- (2) The offense charged is:
 - (A) A felony that involves the intentional, knowing, or reckless bodily injury, substantial bodily injury, or serious bodily injury of another person; or
 - (B) A misdemeanor or petty misdemeanor that carries a mandatory minimum sentence and that involves the intentional, knowing, or reckless bodily injury, substantial bodily injury, or serious bodily injury of another person;

- (3) The offense charged involves a conspiracy or solicitation to intentionally, knowingly, or recklessly kill another person or to cause serious bodily injury to another person;
- (4) The offense charged is a class A felony;
- (5) The offense charged is nonprobationable;
- (6) The defendant has been convicted of any offense defined as a felony by the Hawaii Penal Code or has been convicted for any conduct that if perpetrated in this State would be punishable as a felony;
- (7) The defendant is found to be a law violator or delinquent child for the commission of any offense defined as a felony by the Hawaii Penal Code or for any conduct that if perpetrated in this State would constitute a felony;
- (8) The defendant has a prior conviction for a felony committed in any state, federal, or foreign jurisdiction;
- (9) A firearm was used in the commission of the offense charged;
- (10) The defendant is charged with the distribution of a dangerous, harmful, or detrimental drug to a minor;
- (11) The defendant has been charged with a felony offense and has been previously granted deferred acceptance of guilty plea status for a prior offense, regardless of whether the period of deferral has already expired;
- (12) The defendant has been charged with a misdemeanor offense and has been previously granted deferred acceptance of guilty plea status for a prior felony, misdemeanor, or petty misdemeanor for which the period of deferral has not yet expired;
- (13) The offense charged is:
 - (A) Escape in the first degree;
 - (B) Escape in the second degree;
 - (C) Promoting prison contraband in the first degree;
 - (D) Promoting prison contraband in the second degree;
 - (E) Bail jumping in the first degree;
 - (F) Bail jumping in the second degree;
 - (G) Bribery;
 - (H) Bribery of or by a witness;
 - (I) Intimidating a witness;
 - (J) Bribery of or by a juror;
 - (K) Intimidating a juror;
 - (L) Jury tampering;
 - ~~(M) Promoting prostitution in the first degree;~~
 - ~~(N)~~ (M) Promoting prostitution in the second degree;
 - ~~(O)~~ (N) Abuse of family or household ~~[members;]~~ member;
 - ~~(P)~~ (O) Sexual assault in the second degree;
 - ~~(Q)~~ (P) Sexual assault in the third degree;
 - ~~(R)~~ (Q) A violation of an order issued pursuant to chapter 586;
 - ~~(S)~~ (R) Promoting child abuse in the second degree;
 - ~~(T)~~ (S) Promoting child abuse in the third degree;
 - ~~(U)~~ (T) Electronic enticement of a child in the first degree;
 - ~~(V)~~ (U) Electronic enticement of a child in the second degree;
 - ~~(W)~~ (V) Prostitution pursuant to section 712-1200(1)(b);
 - ~~(X)~~ (W) Street solicitation of prostitution under section 712-1207(1)(b);
 - ~~(Y)~~ (X) Solicitation of prostitution near schools or public parks under section 712-1209; ~~[øf]~~

~~(Z)~~ (Y) Habitual solicitation of prostitution under section 712-1209.5; or

(Z) Solicitation of a minor for prostitution under section 712-1209.1;

- (14) The defendant has been charged with:
- (A) Knowingly or intentionally falsifying any report required under chapter 11, part XIII with the intent to circumvent the law or deceive the campaign spending commission; or
 - (B) Violating section 11-352 or 11-353; or
- (15) The defendant holds a commercial driver's license and has been charged with violating a traffic control law, other than a parking law, in connection with the operation of any type of motor vehicle."

SECTION 6. This Act does not affect rights and duties that matured, penalties that were incurred, and proceedings that were begun before its effective date.

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

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

(Approved June 20, 2014.)