

# H.B. NO. 2297

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## A BILL FOR AN ACT

RELATING TO SENTENCING.

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

1 SECTION 1. This Act shall be known as the "Serious  
2 Consequences for Serious Crime Act of 2006."

3 SECTION 2. Chapter 706, Hawaii Revised Statutes, is  
4 amended by adding a new section to be appropriately designated  
5 and to read as follows:

6 "§706- Special sentencing of habitual violent felons.

7 (1) Notwithstanding any other provision of law to the contrary,  
8 a habitual violent felon shall be sentenced to both:

9 (a) A mandatory minimum term of imprisonment of not less  
10 than thirty years; and

11 (b) A mandatory indeterminate term of life imprisonment.

12 (2) The sentence under subsection (1) may be mitigated as  
13 provided in subsection (8).

14 (3) A habitual violent felon shall not be eligible for  
15 parole sooner than serving the mandatory minimum term under  
16 subsection (1) or (2), as applicable.

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1       (4) Except for work furlough programs in the final year of  
2 a sentence which require incarceration during the time the  
3 inmate is not working or traveling to or from work, a habitual  
4 violent felon shall not be eligible for pre-release, furlough,  
5 or other modified terms of imprisonment without the written  
6 authorization of the governor, which authorization shall not be  
7 delegable.

8       (5) A defendant is a "habitual violent felon" if:

9       (a) The defendant is at least eighteen years old at the  
10 time the defendant committed the current offense;

11       (b) The current conviction is for murder in the second  
12 degree or any class A or class B felony that is a  
13 crime of violence; and

14       (c) The defendant has at least two prior and separate  
15 felony convictions for:

16       (i) Murder in any degree;

17       (ii) Any class A felony or class B felony that is a  
18 crime of violence; or

19       (iii) Any federal or out-of-state offense that is  
20 comparable to a crime of violence as defined in  
21 subsection (6), or any federal or out-of-state  
22 offense that under the laws of this State would

1                   be a crime of violence as defined in subsection  
2                   (6).

3           (6) For purposes of this section, "crime of violence"  
4 means:

- 5           (a) Murder in any degree;
- 6           (b) Manslaughter;
- 7           (c) Assault in the first degree;
- 8           (d) Kidnapping;
- 9           (e) Sexual assault in the first degree or second degree;
- 10          (f) Continuous sexual assault of a minor under the age of  
11           fourteen years that includes an act of sexual  
12           penetration;
- 13          (g) Promoting child abuse in the first degree;
- 14          (h) Robbery in the first degree or second degree;
- 15          (i) Burglary in the first degree; or
- 16          (j) Carrying or use of a firearm in the commission of a  
17           separate felony.

18          (7) The court shall advise a defendant of the defendant's  
19          eligibility for sentencing under this section prior to the entry  
20          of a verdict of guilty, whether by trial, plea of guilty, or  
21          plea of no contest, and shall set forth the date and  
22          jurisdiction where each prior conviction occurred.

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1        (8) The court may impose a mitigated sentence if a motion  
2 is made by the State that the court depart from the sentencing  
3 provisions of this section, based upon the defendant's  
4 cooperation in the investigation in another case or of another  
5 person or entity."

6        SECTION 3. Section 641-13, Hawaii Revised Statutes, is  
7 amended to read as follows:

8        "**§641-13 By State in criminal cases.** An appeal may be  
9 taken by and on behalf of the State from the district or circuit  
10 courts to the supreme court, subject to chapter 602, in all  
11 criminal cases, in the following instances:

- 12        (1) From an order or judgment quashing, setting aside, or  
13        sustaining a motion to dismiss, any indictment,  
14        information, or complaint or any count thereof;
- 15        (2) From an order or judgment, sustaining a special plea  
16        in bar, or dismissing the case where the defendant has  
17        not been put in jeopardy;
- 18        (3) From an order granting a new trial;
- 19        (4) From an order arresting judgment;
- 20        (5) From a ruling on a question of law adverse to the  
21        State where the defendant was convicted and appeals  
22        from the judgment;

- 1 (6) From the sentence, on the ground that it is illegal;
- 2 (7) From a pretrial order granting a motion for the
- 3 suppression of evidence, including a confession or
- 4 admission, or the return of property in which case the
- 5 intermediate appellate court or the supreme court, as
- 6 the case may be, shall give priority to such appeal
- 7 and the order shall be stayed pending outcome of such
- 8 appeal;
- 9 (8) From an order denying a request by the State for
- 10 protective order for nondisclosure of witness for
- 11 their personal safety under Rule 16(e)(4) of the
- 12 Hawaii Rules of Penal Procedure, in which case the
- 13 intermediate appellate court or the supreme court, as
- 14 the case may be, shall give priority to such appeal
- 15 and the order shall be stayed pending outcome of such
- 16 appeal;
- 17 (9) From a judgment of acquittal following a jury verdict
- 18 of guilty[-]; or
- 19 (10) From an order granting a defendant's motion made
- 20 pursuant to section 706- to depart from the
- 21 sentencing provisions for habitual violent felons."

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1 SECTION 4. Section 706-606.5, Hawaii Revised Statutes, is  
2 amended to read as follows:

3 "§706-606.5 Sentencing of repeat offenders. (1)

4 Notwithstanding section 706-669 and any other law to the  
5 contrary, any person convicted of murder in the second degree,  
6 any class A felony, any class B felony, or any of the following  
7 class C felonies: section 188-23 relating to possession or use  
8 of explosives, electrofishing devices, and poisonous substances  
9 in state waters; section 291E-61.5 relating to habitually  
10 operating a vehicle under the influence of an intoxicant;  
11 section 386-98 relating to penalties for fraud; section 431:10A-  
12 131 relating to insurance fraud; section 431:10C- 307.7 relating  
13 to insurance fraud; section 432:1-106 relating to insurance  
14 fraud; section 432D-18.5 relating to insurance fraud; section  
15 707-703 relating to negligent homicide in the first degree;  
16 section 707-711 relating to assault in the second degree;  
17 section 707-712.5 relating to assault on a law enforcement  
18 officer in the first degree; section 707-713 relating to  
19 reckless endangering in the first degree; section 707-716  
20 relating to terroristic threatening in the first degree; section  
21 707-721 relating to unlawful imprisonment in the first degree;  
22 section 707-732 relating to sexual assault or rape in the third

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1 degree; section 707-735 relating to sodomy in the third degree;  
2 section 707-736 relating to sexual abuse in the first degree;  
3 [~~707-751~~] section 707-752 relating to promoting child abuse in  
4 the [~~second~~] third degree; section 707-757 relating to  
5 electronic enticement of a child in the second degree; section  
6 707-766 relating to extortion in the second degree; section 708-  
7 811 relating to burglary in the second degree; section 708-821  
8 relating to criminal property damage in the second degree;  
9 section 708-831 relating to theft in the first degree as amended  
10 by Act 68, Session Laws of Hawaii 1981; section 708-831 relating  
11 to theft in the second degree; section 708-835.5 relating to  
12 theft of livestock; section 708-836 relating to unauthorized  
13 control of propelled vehicle; section 708-836.5 relating to  
14 unauthorized entry into motor vehicle; section 708-839.8  
15 relating to identity theft in the third degree; section 708-852  
16 relating to forgery in the second degree; section 708-854  
17 relating to criminal possession of a forgery device; section  
18 708-875 relating to trademark counterfeiting; section 710-1070  
19 relating to bribery of or by a witness; section 710-1071  
20 relating to intimidating a witness; section 710-1072.2 relating  
21 to retaliating against a witness; section 710-1073 relating to  
22 bribery of or by a juror; section 710-1075 relating to jury

1 tampering; section 710-1075.5 relating to retaliating against a  
2 juror; section 711-1103 relating to riot; section 712-1203  
3 relating to promoting prostitution in the second degree; section  
4 712-1215 relating to promoting pornography for a minor; section  
5 712-1221 relating to gambling in the first degree; section 712-  
6 1224 relating to possession of gambling records in the first  
7 degree; section 712-1243 relating to promoting a dangerous drug  
8 in the third degree; section 712-1247 relating to promoting a  
9 detrimental drug in the first degree; section 712-1249.6  
10 relating to promoting a controlled substance in, on, or near  
11 schools or school vehicles; section 846E-9, relating to failure  
12 to comply with covered offender registration requirements;  
13 section 134-7 relating to ownership or possession of firearms or  
14 ammunition by persons convicted of certain crimes; section 134-8  
15 relating to ownership, etc., of prohibited weapons; section 134-  
16 9 relating to permits to carry[7]; section 134-51 relating to  
17 use of a deadly weapon in the commission of a crime; section  
18 134-52 relating to use of a switchblade knife in the commission  
19 of a crime; section 134-53 relating to use of a butterfly knife  
20 in the commission of a crime, or who is convicted of attempting  
21 to commit murder in the second degree, any class A felony, any  
22 class B felony, or any of the class C felony offenses enumerated



1 above and who has a prior conviction or prior convictions for  
2 the following felonies, including an attempt to commit the same:  
3 murder, murder in the first or second degree, a class A felony,  
4 a class B felony, any of the class C felony offenses enumerated  
5 above, or any felony conviction of another jurisdiction shall be  
6 sentenced to a mandatory minimum period of imprisonment without  
7 possibility of parole during such period as follows:

8 (a) One prior felony conviction:

9 (i) Where the instant conviction is for murder in the  
10 second degree or attempted murder in the second  
11 degree--ten years;

12 (ii) Where the instant conviction is for a class A  
13 felony--six years, eight months;

14 (iii) Where the instant conviction is for a class B  
15 felony--three years, four months;

16 (iv) Where the instant conviction is for a class C  
17 felony offense enumerated above--one year, eight  
18 months;

19 (b) Two prior felony convictions:

20 (i) Where the instant conviction is for murder in the  
21 second degree or attempted murder in the second  
22 degree--twenty years;

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

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- 1 (a) Within [~~twenty years after~~] the period that begins on  
2 the date of the defendant's conviction and ends twenty  
3 years after the date of the defendant's release from  
4 incarceration, release from parole, or release from  
5 probation, whichever is later, for a prior felony  
6 conviction where the prior felony conviction was for  
7 murder in the first degree or attempted murder in the  
8 first degree;
- 9 (b) Within [~~twenty years after~~] the period that begins on  
10 the date of the defendant's conviction and ends twenty  
11 years after the date of the defendant's release from  
12 incarceration, release from parole, or release from  
13 probation, whichever is later, for a prior felony  
14 conviction where the prior felony conviction was for  
15 murder in the second degree or attempted murder in the  
16 second degree;
- 17 (c) Within [~~twenty years after~~] the period that begins on  
18 the date of the defendant's conviction and ends twenty  
19 years after the date of the defendant's release from  
20 incarceration, release from parole, or release from  
21 probation, whichever is later, for a prior felony

- 1 conviction where the prior felony conviction was for a  
2 class A felony;
- 3 (d) Within [~~ten years after~~] the period that begins on the  
4 date of the defendant's conviction and ends ten years  
5 after the date of the defendant's release from  
6 incarceration, release from parole, or release from  
7 probation, whichever is later, for a prior felony  
8 conviction where the prior felony conviction was for a  
9 class B felony;
- 10 (e) Within [~~five years after~~] the period that begins on  
11 the date of the defendant's conviction and ends five  
12 years after the date of the defendant's release from  
13 incarceration, release from parole, or release from  
14 probation, whichever is later, for a prior felony  
15 conviction where the prior felony conviction was for a  
16 class C felony offense enumerated above;
- 17 (f) [~~Within the maximum term of imprisonment possible~~  
18 ~~after a prior felony conviction of another~~  
19 ~~jurisdiction.] After a prior felony conviction of  
20 another jurisdiction, within the period that begins on  
21 the date of the defendant's conviction and does not  
22 end until:~~

1            (i) The defendant is released from incarceration,  
2            released from parole, or released from probation,  
3            whichever is later; and

4            (ii) After the defendant's release from incarceration,  
5            release from parole, or release from probation,  
6            whichever is later, the expiration of an  
7            additional period that equals the maximum term of  
8            possible incarceration for the crime for which  
9            the defendant was convicted.

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

15           (a) Within [~~eight years after~~] the period that begins on  
16           the date of the defendant's conviction and ends eight  
17           years after the date of the defendant's release from  
18           incarceration, release from parole, or release from  
19           probation, whichever is later, for a prior felony  
20 conviction where the prior felony conviction was for a  
21 class A felony;

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- 1 (b) Within five years after the period that begins on the  
2 date of the defendant's conviction and ends five years  
3 after the date of the defendant's release from  
4 incarceration, release from parole, or release from  
5 probation, whichever is later, for the prior felony  
6 conviction where the prior felony conviction was for a  
7 class B felony;
- 8 (c) Within four years after the period that begins on the  
9 date of the defendant's conviction and ends four years  
10 after the date of the defendant's release from  
11 incarceration, release from parole, or release from  
12 probation, whichever is later, for the prior felony  
13 conviction where the prior felony conviction was for a  
14 class C felony offense enumerated above.
- 15 (4) Notwithstanding any other law to the contrary, any  
16 person convicted of any of the following misdemeanor offenses:
- 17 (a) Section 707-712 relating to assault in the third  
18 degree;
- 19 (b) Section 707-717 relating to terroristic threatening in  
20 the second degree; and
- 21 (c) Section 707-733 relating to sexual assault in the  
22 fourth degree [7

1       ~~(d) Section 708-822 relating to criminal property damage~~  
2             ~~in the third degree;~~

3       ~~(e) Section 708-832 relating to theft in the third degree;~~  
4             ~~and~~

5       ~~(f) Section 708-833.5(2) relating to misdemeanor~~  
6             ~~shoplifting],~~

7       and who has been convicted of ~~{any of the offenses enumerated~~  
8       ~~above on at least three prior and separate occasions within~~  
9       ~~three years of the date of the commission of the present~~  
10       ~~offense,]~~ three misdemeanors, three felonies, or any combination  
11       of misdemeanors and felonies totaling three convictions for acts  
12       that took place on three prior and separate occasions, shall be  
13       sentenced to no less than nine months of imprisonment~~[-],~~ which  
14       shall not be suspended. Whenever a court sentences a defendant  
15       under this subsection for an offense under section 707-733, the  
16       court shall order the defendant to participate in a sex offender  
17       assessment and, if recommended based on the assessment,  
18       participate in the sex offender treatment program established by  
19       chapter 353E.

20       (5) The sentencing court may impose the above sentences  
21       consecutive to any sentence imposed on the defendant for a prior  
22       conviction, but such sentence shall be imposed concurrent to the

1 sentence imposed for the instant conviction. The court may  
2 impose a lesser mandatory minimum period of imprisonment without  
3 possibility of parole than that mandated by this section where  
4 the court finds that strong mitigating circumstances warrant  
5 such action[-]; provided that the mandatory minimum period of  
6 imprisonment imposed is a mandatory minimum period of  
7 imprisonment not less than half the mandatory minimum period of  
8 imprisonment without possibility of parole that would otherwise  
9 be mandated by this section. Strong mitigating circumstances  
10 shall include, but shall not be limited to the provisions of  
11 section 706-621. The court shall provide a written opinion  
12 stating its reasons for imposing the lesser sentence.

13 (6) [A] Except for work furlough programs in the final  
14 year of a sentence which require incarceration during the time  
15 the inmate is not working or traveling to or from work, a person  
16 who is imprisoned in a correctional institution pursuant to  
17 subsection (1) shall not be paroled, pre-released, or furloughed  
18 prior to the expiration of the mandatory minimum term of  
19 imprisonment imposed pursuant to subsection (1).

20 (7) For purposes of this section:



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

4 (b) A prior conviction in this or another jurisdiction  
5 shall be deemed a felony conviction if it was  
6 punishable by a sentence of death or of imprisonment  
7 in excess of one year; and

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

9 SECTION 5. Section 706-622.5, Hawaii Revised Statutes, is  
10 amended by amending subsection (1) to read as follows:

11 "(1) [~~Notwithstanding~~] Except as provided by section 706-  
12 620(3), a person who has no prior felony conviction, who has no  
13 felony charge for which proceedings have been deferred but not  
14 discharged under section 712-1255, and who has no felony charge  
15 for which acceptance of the plea has been deferred but not  
16 discharged under chapter 853, who is convicted for the first  
17 time for any offense other than a class A felony under part IV  
18 of chapter 712 involving possession or use, not including to  
19 distribute or manufacture as defined in section 712-1240, of any  
20 dangerous drug, detrimental drug, harmful drug, intoxicating  
21 compound, marijuana, or marijuana concentrate, as defined in  
22 section 712-1240, unlawful methamphetamine trafficking as

1 provided in section 712-1240.6, or involving possession or use  
2 of drug paraphernalia under section 329-43.5, is eligible to be  
3 sentenced to probation under subsection (2) if the person meets  
4 the following criteria:

5 (a) The court has determined that the person is nonviolent  
6 after reviewing the person's criminal history, the  
7 factual circumstances of the offense for which the  
8 person is being sentenced, and any other relevant  
9 information;

10 (b) The person has been assessed by a certified substance  
11 abuse counselor to be in need of substance abuse  
12 treatment due to dependency or abuse under the  
13 applicable Diagnostic and Statistical Manual and  
14 Addiction Severity Index; and

15 (c) Except for those persons directed to substance abuse  
16 treatment under the supervision of the drug court, the  
17 person presents a proposal to receive substance abuse  
18 treatment in accordance with the treatment plan  
19 prepared by a certified substance abuse counselor  
20 through a substance abuse treatment program that  
21 includes an identified source of payment for the  
22 treatment program.

1 Nothing in this section shall affect sentencing for any  
2 conviction for an offense that is not under part IV of chapter  
3 712, even when such a conviction arises out of the same set of  
4 facts as the offense that is under part IV of chapter 712.  
5 Nothing in this section shall affect the sentencing of offenders  
6 eligible for mandatory sentencing, enhanced sentencing, or other  
7 special sentencing provisions under part I or IV of this  
8 chapter."

9 SECTION 6. Section 706-659, Hawaii Revised Statutes, is  
10 amended to read as follows:

11 **"§706-659 Sentence of imprisonment for class A felony.**  
12 Notwithstanding part II; sections 706-605, 706-606, 706-606.5,  
13 706-660.1, 706-661, and 706-662; and any other law to the  
14 contrary, a person who has been convicted of a class A felony[  
15 ~~except class A felonies defined in chapter 712, part IV,~~] shall  
16 be sentenced to [a~~n~~]:

17 (a) An indeterminate term of imprisonment of twenty years  
18 without the possibility of suspension of sentence or  
19 probation[-], if the person has no prior felony  
20 conviction;

21 (b) An indeterminate term of imprisonment of thirty years  
22 without the possibility of suspension of sentence or

1           probation, if the person has a prior felony  
2           conviction; or

3           (c) Life imprisonment with the possibility of parole, if  
4           the person has two or more prior felony convictions.

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

7 ~~[A person who has been convicted of a class A felony defined in~~  
8 ~~chapter 712, part IV, may be sentenced to an indeterminate term~~  
9 ~~of imprisonment, except as provided for in section 706-660.1~~  
10 ~~relating to the use of firearms in certain felony offenses and~~  
11 ~~section 706-606.5 relating to repeat offenders. When ordering~~  
12 ~~such a sentence, the court shall impose the maximum length of~~  
13 ~~imprisonment which shall be twenty years. The minimum length of~~  
14 ~~imprisonment shall be determined by the Hawaii paroling~~  
15 ~~authority in accordance with section 706-669.]"~~

16           SECTION 7. Section 706-660, Hawaii Revised Statutes, is  
17 amended to read as follows:

18           "**§706-660 Sentence of imprisonment for class B and C**  
19 **felonies; ordinary terms.** A person who has been convicted of a  
20 class B or class C felony may be sentenced to an indeterminate  
21 term of imprisonment except as provided for in section 706-660.1  
22 relating to the use of firearms in certain felony offenses and

1 section 706-606.5 relating to repeat offenders. When ordering  
2 such a sentence, the court shall impose the maximum length of  
3 imprisonment which shall be as follows:

- 4 [~~1~~] (a) For a class B felony [~~—10 years, and~~]:  
5 (i) Ten years, if the person has no prior felony  
6 conviction;  
7 (ii) Fifteen years, if the person has a prior felony  
8 conviction; or  
9 (iii) Twenty years, if the person has two or more prior  
10 felony convictions.

- 11 [~~2~~] (b) For a class C felony [~~—5 years.~~]:  
12 (i) Five years, if the person has no prior felony  
13 conviction;  
14 (ii) Seven years, six months, if the person has a  
15 prior felony conviction; or  
16 (iii) Ten years, if the person has two or more prior  
17 felony convictions.

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

20 SECTION 8. Section 706-663, Hawaii Revised Statutes, is  
21 amended to read as follows:

1           "§706-663 Sentence of imprisonment for misdemeanor and  
2 petty misdemeanor. ~~[After]~~ (1) For a first offense, after  
3 consideration of the factors set forth in sections 706-606 and  
4 706-621, the court may sentence a person who has been convicted  
5 of a misdemeanor or a petty misdemeanor to imprisonment for a  
6 definite term to be fixed by the court and, notwithstanding any  
7 other law to the contrary, not to exceed [one year in the case  
8 of a misdemeanor or thirty days in the case of a petty  
9 misdemeanor.] :

10           (a) One year in the case of a misdemeanor defined in  
11           chapter 707 or 709;

12           (b) Thirty days in the case of any other misdemeanor; or

13           (c) Twenty days in the case of a petty misdemeanor.

14           (2) For a second offense that occurs within five years of  
15 a prior conviction for a previous felony, misdemeanor, or petty  
16 misdemeanor, after consideration of the factors set forth in  
17 sections 706-606 and 706-621, the court may sentence a person  
18 who has been convicted of a misdemeanor or a petty misdemeanor  
19 to imprisonment for a definite term to be fixed by the court  
20 and, notwithstanding any other law to the contrary, not to  
21 exceed:

- 1        (a) One year in the case of a misdemeanor defined in  
2                chapter 707 or 709;
- 3        (b) Sixty days in the case of any other misdemeanor; or  
4        (c) Thirty days in the case of a petty misdemeanor.
- 5        (3) Notwithstanding any other law to the contrary, for a  
6 third conviction that occurs within five years of two prior  
7 felony convictions, two prior misdemeanor convictions, two prior  
8 petty misdemeanor convictions, or any combination of two prior  
9 convictions for felonies, misdemeanors, or petty misdemeanors,  
10 after consideration of the factors set forth in sections 706-606  
11 and 706-621:
- 12        (a) A person who has been convicted of a misdemeanor  
13                defined in chapter 707 or 709 shall be sentenced to  
14                imprisonment for a definite term of not more than one  
15                year and not less than one hundred eighty days;
- 16        (b) A person who has been convicted of any other  
17                misdemeanor shall be sentenced to imprisonment for a  
18                definite term of not more than one hundred eighty days  
19                and not less than ninety days; or
- 20        (c) A person who has been convicted of a petty misdemeanor  
21                shall be sentenced to imprisonment for a definite term

1           of not more than thirty days and not less than ten  
2           days.

3           (4) Notwithstanding any other law to the contrary, for a  
4 fourth or subsequent conviction that occurs within five years of  
5 three prior felony convictions, three prior misdemeanor  
6 convictions, three prior petty misdemeanor convictions, or any  
7 combination of three prior convictions for felonies,  
8 misdemeanors, or petty misdemeanors, after consideration of the  
9 factors set forth in sections 706-606 and 706-621:

10           (a) A person who has been convicted of a misdemeanor shall  
11           be sentenced to imprisonment for a definite term of  
12           one year; or

13           (b) The court may sentence a person who has been convicted  
14           of a petty misdemeanor to imprisonment for a definite  
15           term of thirty days.

16           (5) A person sentenced pursuant to the provisions of  
17 subsection (3) or (4) shall not be sentenced to a suspended  
18 sentence and shall not be eligible for a deferred acceptance of  
19 guilty or nolo contendere plea."

20           SECTION 9. Section 712-1240.6, Hawaii Revised Statutes, is  
21 amended to read as follows:



1 " [f] §712-1240.6 [f] Unlawful methamphetamine trafficking;

2 penalties. (1) A person commits the offense of unlawful  
3 methamphetamine trafficking if the person knowingly  
4 manufactures, distributes, dispenses, or possesses with intent  
5 to manufacture, distribute or dispense, one or more  
6 preparations, compounds, mixtures, or substances of  
7 methamphetamine, or any of its salts, isomers, and salts of  
8 isomers.

9 (2) The manufacture, in any amount, of one or more  
10 preparations, compounds, mixtures, or substances of  
11 methamphetamine, or any of its salts, isomers, and salts of  
12 isomers of methamphetamine, or the distribution[7] or dispensing  
13 of or possession with intent to manufacture, distribute, or  
14 dispense one or more preparations, compounds, mixtures, or  
15 substances of an aggregate weight of one-eighth ounce or more of  
16 methamphetamine, or any of its salts, isomers, and salts of  
17 isomers is a class A felony with a mandatory minimum prison term  
18 of [~~five~~] ten years; provided however:

19 (a) If death or serious bodily injury as defined in  
20 section 707-700 to any person other than the  
21 defendant, results from the manufacture, distribution,  
22 or dispensing of or possession with intent to

1 manufacture, distribute, or dispense any  
2 methamphetamine substance, conviction under this  
3 section shall be treated as a class A felony, with a  
4 mandatory minimum prison term of [~~ten~~] twelve years  
5 and a fine not to exceed \$4,000,000 if the defendant  
6 is an individual, or a fine not to exceed \$10,000,000  
7 if the defendant is other than an individual; and  
8 (b) If the defendant has been convicted of any felony drug  
9 offense prior to conviction of the offense under this  
10 section, conviction under this section shall be  
11 punishable by a term of life imprisonment with the  
12 possibility of parole, with a mandatory minimum prison  
13 term of fifteen years and a fine not to exceed  
14 \$8,000,000 if the defendant is an individual, or a  
15 fine not to exceed \$20,000,000 if the defendant is  
16 other than an individual.

17 (3) The [~~manufacture,~~] distribution[~~,~~] or dispensing of  
18 one or more preparations, compounds, mixtures, or substances of  
19 an aggregate weight of less than one-eighth ounce of  
20 methamphetamine, or any of its salts, isomers, and salts of  
21 isomers is a class B felony with a mandatory minimum prison term  
22 of three years; provided however:

- 1 (a) If death or serious bodily injury as defined in  
2 section 707-700 to any person other than the defendant  
3 results from the [~~manufacture,~~] distribution or  
4 dispensing of any methamphetamine substance,  
5 conviction under this section shall be treated as a  
6 class B felony, with a mandatory minimum prison term  
7 of five years and a fine not to exceed \$2,000,000 if  
8 the defendant is an individual, or a fine not to  
9 exceed \$5,000,000 if the defendant is other than an  
10 individual; and
- 11 (b) If the defendant has been convicted of any felony drug  
12 offense prior to conviction of the offense under this  
13 section, conviction under this section shall be  
14 treated as a class A felony, with a mandatory minimum  
15 prison term of eight years and a fine not to exceed  
16 \$4,000,000 if the defendant is an individual, or a  
17 fine not to exceed \$10,000,000 if the defendant is  
18 other than an individual.
- 19 (c) If the distribution or dispensing of any amount of a  
20 methamphetamine substance is to a minor, then  
21 conviction under this section shall be treated as a

1 class A felony, with a mandatory minimum prison term  
2 of five years.

3 (4) A defendant convicted of the offense of unlawful  
4 methamphetamine trafficking shall be sentenced in accordance  
5 with this section, notwithstanding sections 706-620(2), 706-659,  
6 706-640, and 706-641. When sentencing a defendant convicted of  
7 the offense of unlawful methamphetamine trafficking, the court  
8 may order restitution or reimbursement to:

9 (a) The state or county government for the cost incurred  
10 for any cleanup associated with the manufacture,  
11 distribution, or dispensing of methamphetamine, or any  
12 of its salts, isomers, and salts of isomers by the  
13 defendant; and

14 (b) Any other person injured as a result of the  
15 manufacture, distribution, or dispensing of  
16 methamphetamine, or any of its salts, isomers, and  
17 salts of isomers, by the defendant."

18 SECTION 10. Section 853-4, Hawaii Revised Statutes, is  
19 amended to read as follows:

20 "§853-4 Chapter not applicable; when. This chapter shall  
21 not apply when:

- 1 (1) The offense charged involves the intentional, knowing,  
2 reckless, or negligent killing of another person;
- 3 (2) The offense charged is:
  - 4 (A) A felony that involves the intentional, knowing,  
5 or reckless bodily injury, substantial bodily  
6 injury, or serious bodily injury of another  
7 person; or
  - 8 (B) A misdemeanor or petty misdemeanor that carries a  
9 mandatory minimum sentence and that involves the  
10 intentional, knowing, or reckless bodily injury,  
11 substantial bodily injury, or serious bodily  
12 injury of another person;
- 13 (3) The offense charged involves a conspiracy or  
14 solicitation to intentionally, knowingly, or  
15 recklessly kill another person or to cause serious  
16 bodily injury to another person;
- 17 (4) The offense charged is a class A felony;
- 18 (5) The offense charged is nonprobationable;
- 19 (6) The defendant has been convicted of any offense  
20 defined as a felony by the Hawaii Penal Code or has  
21 been convicted for any conduct that if perpetrated in  
22 this State would be punishable as a felony;

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- 1 (7) The defendant is found to be a law violator or  
2 delinquent child for the commission of any offense  
3 defined as a felony by the Hawaii Penal Code or for  
4 any conduct that if perpetrated in this State would  
5 constitute a felony;
- 6 (8) The defendant has a prior conviction for a felony  
7 committed in any state, federal, or foreign  
8 jurisdiction;
- 9 (9) A firearm was used in the commission of the offense  
10 charged;
- 11 (10) The defendant is charged with the distribution of a  
12 dangerous, harmful, or detrimental drug to a minor;
- 13 (11) The defendant has been charged with a felony offense  
14 and has been previously granted deferred acceptance of  
15 guilty plea status for a prior offense, regardless of  
16 whether the period of deferral has already expired;
- 17 (12) The defendant has been charged with a misdemeanor  
18 offense and has been previously granted deferred  
19 acceptance of guilty plea status for a prior felony,  
20 misdemeanor, or petty misdemeanor for which the period  
21 of deferral has not yet expired;
- 22 (13) The offense charged is:

- 1 (A) Escape in the first degree;
- 2 (B) Escape in the second degree;
- 3 (C) Promoting prison contraband in the first degree;
- 4 (D) Promoting prison contraband in the second degree;
- 5 (E) Bail jumping in the first degree;
- 6 (F) Bail jumping in the second degree;
- 7 (G) Bribery;
- 8 (H) Bribery of a witness;
- 9 (I) Intimidating a witness;
- 10 (J) Bribery of or by a juror;
- 11 (K) Intimidating a juror;
- 12 (L) Jury tampering;
- 13 (M) Promoting prostitution in the first degree;
- 14 (N) Promoting prostitution in the second degree;
- 15 (O) Promoting prostitution in the third degree;
- 16 (P) Abuse of family or household members;
- 17 (Q) Sexual assault in the second degree;
- 18 (R) Sexual assault in the third degree; [ex]
- 19 (S) A violation of an order issued pursuant to
- 20 chapter 586; [ex]
- 21 (T) Kidnapping;
- 22 (U) Unlawful imprisonment in the first degree;

- 1            (V) Promoting child abuse in the second degree;
- 2            (W) Promoting child abuse in the third degree;
- 3            (X) Electronic enticement of a child in the first
- 4            degree;
- 5            (Y) Electronic enticement of a child in the second
- 6            degree;
- 7            (Z) Sexual exploitation of a minor;
- 8            (AA) Identity theft in the first degree;
- 9            (BB) Identity theft in the second degree;
- 10           (CC) Robbery in the second degree;
- 11           (DD) Habitually operating a vehicle under the
- 12           influence of an intoxicant;
- 13           (EE) Bribery;
- 14           (FF) Bribery of or by a witness;
- 15           (GG) Retaliating against a witness;
- 16           (HH) Bribery of or by a juror;
- 17           (II) Jury tampering;
- 18           (JJ) Retaliating against a juror;
- 19           (KK) Promoting pornography for a minor;
- 20           (LL) Promoting a controlled substance in, on, or near
- 21           schools or school vehicles; or





JUSTIFICATION SHEET

DEPARTMENT: Attorney General

TITLE: A BILL FOR AN ACT RELATING TO SENTENCING.

PURPOSE: Amend Hawaii's sentencing laws to: (1) provide for a mandatory sentence of 30 years to life for habitual violent felons; (2) add 21 serious class C felonies to those offenses subject to repeat offender sentencing; (3) amend sections 706- 659, 706-660, and 706-663 to provide higher maximum terms for repeat offenders and lower penalties for most misdemeanor and petty misdemeanor offenses; (4) amend section 712-1240.6 to restore the previous class A felony penalty for the manufacture of methamphetamine and to provide higher mandatory minimum sentences for methamphetamine manufacturers; (5) make defendants convicted of class A felony drug offenses and recidivist drug offenders ineligible for lenient sentencing under Act 161, Session Laws of Hawaii 2002; (6) amend Hawaii's repeat offender statute in order to; (a) change the method of calculating the period of eligibility for repeat offender sentencing by adding the time a defendant spends on probation, parole, or in prison to the otherwise applicable period; (b) enhance certain sentencing provisions; and (c) add clarification language to several provisions; and (7) add 20 serious class B and class C felonies to the list of offenses for which a deferred acceptance of plea (DAG or DANC) is not permitted.

MEANS: Add a new section to chapter 706, Hawaii Revised Statutes, and amend sections 641-13, 706-606.5, 706-622.5(1), 706-659, 706-660, 706-663, 712-1240.6, and 853-4, Hawaii Revised Statutes.

JUSTIFICATION: First, the citizens of Hawaii must be protected from violent felons who, through

their repeated violent crimes against innocent victims, prove that they have no desire to be rehabilitated. Next, drug offenders who possess the huge amounts of illegal drugs necessary to be convicted of a class A felony and drug offenders with prior felonies should not be excluded from Hawaii's mandatory sentencing laws. And finally, Hawaii's laws regarding repeat offenders and Hawaii's laws regarding deferred acceptance of guilty pleas need to be reformed and updated with new crimes that have been recently enacted but have not yet been added to these statutes.

Impact on the public: The impact on the public will be beneficial because more appropriate sentencing will promote public safety.

Impact on the department and other agencies: The department will be able to obtain more appropriate sentences for recidivist criminals. The county police departments and prosecutors offices will have fewer revolving door cases involving repeated investigations and prosecutions of the same individual.

GENERAL FUND: None.

OTHER FUNDS: None.

PPBS PROGRAM DESIGNATION: None.

OTHER AFFECTED AGENCIES: Judiciary, county police, county prosecutors, and the Office of the Public Defender.

EFFECTIVE DATE: Upon approval.