
A BILL FOR AN ACT

RELATING TO SENTENCING.

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

1 SECTION 1. The legislature finds that tougher sentencing
2 guidelines for career criminals with a history of violence could
3 have prevented the unfortunate slaying of Honolulu Police
4 Department Officer Glen Gaspar on March 4th, 2003. The
5 legislature also finds that Officer Gaspar was killed in the
6 line of duty while attempting to apprehend career criminal Shane
7 Mark on an outstanding warrant for investigation of attempted
8 murder and multiple weapon offenses. The legislature further
9 finds that Shane Mark had a history of criminal behavior,
10 including assaulting a police officer, and had been charged over
11 sixty times while having been convicted for fourteen offenses.

12 The legislature further finds that tougher sentencing
13 guidelines for recidivist behavior, such as a "three strikes"
14 law, are a valid policy tool for dealing with career criminals.
15 The U.S. Supreme Court case of Ewing v. California, which
16 upholds the constitutionality of California's "three strikes"
17 law, cites to a California Department of Justice study that
18 shows that four years after the enactment of their "three



1 strikes" law, the recidivism rate of parolees returned to prison
2 for the commission of a new crime dropped by nearly 25 per cent.
3 In addition, after the enactment of the "three strikes" law, the
4 number of parolees leaving California was greater than the
5 number entering the state, and that trend continues. Recent
6 studies in California show that nearly 60 per cent of the crimes
7 in the state are committed by roughly 6 per cent of the criminal
8 offenders.

9 The purpose of this Act is to enact a "three strikes" law
10 in Hawaii that will penalize the career criminal with tendencies
11 towards violence and prevent avoidable tragedies like the
12 slaying of Honolulu Police Department Officer Glen Gaspar.

13 SECTION 2. Chapter 706, Hawaii Revised Statutes, is
14 amended by adding two new sections to be appropriately
15 designated and to read as follows:

16 **"§706-A Sentencing principles for repeat offenders with**
17 **two or more prior convictions, where at least one is for a**
18 **violent crime.**

19 (a) Notwithstanding any other provisions of law, if a
20 defendant has been convicted of a felony and it has been pled
21 and proved that the defendant has (1) two or more prior felony
22 convictions, and that (2) any of the defendant's prior



1 convictions, including a prior felony conviction pled pursuant
2 to (1), is for a violent crime, as defined in -B, the term for
3 the current felony conviction shall be an indeterminate term of
4 life imprisonment with a mandatory minimum term of the
5 indeterminate sentence calculated as the greater of:

6 (A) three times the term otherwise provided as
7 punishment for each current felony conviction
8 subsequent to the two or more prior felony
9 convictions; or

10 (B) twenty-five years or

11 (C) the term of imprisonment for the underlying
12 conviction, including any enhancement applicable under
13 the Penal Code.

14 **§706-B Violent crime; definition.** (a) For the
15 purposes of this section and notwithstanding any other provision
16 of law, "violent crime" shall mean any of the following:

- 17 (1) Murder or manslaughter;
- 18 (2) Assault in the first, second, or third degrees;
- 19 (3) Assault against a police officer;
- 20 (4) Reckless endangering in the first degree;
- 21 (5) Terroristic threatening in the first degree;
- 22 (6) Kidnapping;

- 1 (7) Unlawful imprisonment in the first degree;
- 2 (8) Custodial interference in the first degree;
- 3 (9) Sexual assault in the first, second, or third
- 4 degree;
- 5 (10) Continuous sexual assault of a minor under the
- 6 age of fourteen years;
- 7 (11) Electronic enticement of a child in the first
- 8 degree;
- 9 (12) Extortion in the first or second degree;
- 10 (13) Burglary in the first or second degree;
- 11 (14) Criminal property damage in the first degree;
- 12 (15) Robbery;
- 13 (16) Endangering the welfare of a minor in the first
- 14 degree;
- 15 (17) Abuse of family or household member, where the
- 16 prescribed penalty would be a felony conviction;
- 17 (18) Escape in the first degree;
- 18 (19) Intimidation of a correctional worker;
- 19 (20) Retaliating against a witness or juror;
- 20 (21) Intimidating a juror; and
- 21 (22) Aggravated harassment by stalking.



1 (b) A prior conviction for a violent crime shall include a
2 conviction in another jurisdiction for an offense which includes
3 all of the elements of the particular crime as defined under
4 subsection (a) and Hawaii law and is punishable by imprisonment
5 if the defendant served one year or more in prison for the
6 offense in the other jurisdiction. A prior conviction of a
7 particular felony shall include a conviction in another
8 jurisdiction for an offense which includes all of the elements
9 of the particular felony as defined under Hawaii law if the
10 defendant served one year or more in prison for the offense in
11 the other jurisdiction.

12 (c) None of the following dispositions shall affect the
13 determination that a prior conviction is a prior conviction for
14 a violent crime for purposes of this section:

- 15 (1) The suspension of imposition of judgment or
- 16 sentence;
- 17 (2) The stay of execution of sentence; or
- 18 (3) The commitment to any other facility whose
- 19 function is rehabilitative diversion from prison."

20 SECTION 3. Section 706-606.5, Hawaii Revised Statutes, is
21 amended to read as follows:



1 "§706-606.5 Sentencing of repeat offenders. (1)
2 Notwithstanding section 706-669 and any other law to the
3 contrary, and with the exception of sections 706-A and 706-B,
4 any person convicted of murder in the second degree, any class A
5 felony, any class B felony, or any of the following class C
6 felonies: section 188-23 relating to possession or use of
7 explosives, electrofishing devices, and poisonous substances in
8 state waters; section 707-703 relating to negligent homicide in
9 the first degree; 707-711 relating to assault in the second
10 degree; 707-713 relating to reckless endangering in the first
11 degree; 707-716 relating to terroristic threatening in the first
12 degree; 707-721 relating to unlawful imprisonment in the first
13 degree; 707-732 relating to sexual assault or rape in the third
14 degree; 707-735 relating to sodomy in the third degree; 707-736
15 relating to sexual abuse in the first degree; 707-751 relating
16 to promoting child abuse in the second degree; 707-766 relating
17 to extortion in the second degree; 708-811 relating to burglary
18 in the second degree; 708-821 relating to criminal property
19 damage in the second degree; 708-831 relating to theft in the
20 first degree as amended by Act 68, Session Laws of Hawaii 1981;
21 708-831 relating to theft in the second degree; 708-835.5
22 relating to theft of livestock; 708-836 relating to unauthorized



1 control of propelled vehicle; 708-852 relating to forgery in the
2 second degree; 708-854 relating to criminal possession of a
3 forgery device; 708-875 relating to trademark counterfeiting;
4 710-1071 relating to intimidating a witness; 711-1103 relating
5 to riot; 712-1203 relating to promoting prostitution in the
6 second degree; 712-1221 relating to gambling in the first
7 degree; 712-1224 relating to possession of gambling records in
8 the first degree; 712-1243 relating to promoting a dangerous
9 drug in the third degree; 712-1247 relating to promoting a
10 detrimental drug in the first degree; 134-7 relating to
11 ownership or possession of firearms or ammunition by persons
12 convicted of certain crimes; 134-8 relating to ownership, etc.,
13 of prohibited weapons; 134-9 relating to permits to carry, or
14 who is convicted of attempting to commit murder in the second
15 degree, any class A felony, any class B felony, or any of the
16 class C felony offenses enumerated above and who has a prior
17 conviction or prior convictions for the following felonies,
18 including an attempt to commit the same: murder, murder in the
19 first or second degree, a class A felony, a class B felony, any
20 of the class C felony offenses enumerated above, or any felony
21 conviction of another jurisdiction shall be sentenced to a



1 mandatory minimum period of imprisonment without possibility of
2 parole during such period as follows:

3 (a) One prior felony conviction:

4 (i) Where the instant conviction is for murder in the
5 second degree or attempted murder in the second
6 degree--ten years;

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

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

11 (iv) Where the instant conviction is for a class C
12 felony offense enumerated above--one year, eight
13 months;

14 (b) Two prior felony convictions:

15 (i) Where the instant conviction is for murder in the
16 second degree or attempted murder in the second
17 degree--twenty years;

18 (ii) Where the instant conviction is for a class A
19 felony--thirteen years, four months;

20 (iii) Where the instant conviction is for a class B
21 felony--six years, eight months;



1 (iv) Where the instant conviction is for a class C
2 felony offense enumerated above--three years,
3 four months;

4 (c) Three or more prior felony convictions:

5 (i) Where the instant conviction is for murder in the
6 second degree or attempted murder in the second
7 degree--thirty years;

8 (ii) Where the instant conviction is for a class A
9 felony--twenty years;

10 (iii) Where the instant conviction is for a class B
11 felony--ten years;

12 (iv) Where the instant conviction is for a class C
13 felony offense enumerated above--five years.

14 (2) Except as in subsection (3), a person shall not be
15 sentenced to a mandatory minimum period of imprisonment under
16 this section unless the instant felony offense was committed
17 during such period as follows:

18 (a) Within twenty years after a prior felony conviction
19 where the prior felony conviction was for murder in
20 the first degree or attempted murder in the first
21 degree;



1 (b) Within twenty years after a prior felony conviction
2 where the prior felony conviction was for murder in
3 the second degree or attempted murder in the second
4 degree;

5 (c) Within twenty years after a prior felony conviction
6 where the prior felony conviction was for a class A
7 felony;

8 (d) Within ten years after a prior felony conviction where
9 the prior felony conviction was for a class B felony;

10 (e) Within five years after a prior felony conviction
11 where the prior felony conviction was for a class C
12 felony offense enumerated above;

13 (f) Within the maximum term of imprisonment possible after
14 a prior felony conviction of another jurisdiction.

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

20 (a) Within eight years after a prior felony conviction
21 where the prior felony conviction was for a class A
22 felony;

1 (b) Within five years after the prior felony conviction
2 where the prior felony conviction was for a class B
3 felony;

4 (c) Within four years after the prior felony conviction
5 where the prior felony conviction was for a class C
6 felony offense enumerated above.

7 (4) Notwithstanding any other law to the contrary, any
8 person convicted of any of the following misdemeanor offenses:

9 (a) Section 707-712 relating to assault in the third
10 degree;

11 (b) Section 707-717 relating to terroristic threatening in
12 the second degree;

13 (c) Section 707-733 relating to sexual assault in the
14 fourth degree;

15 (d) Section 708-822 relating to criminal property damage
16 in the third degree;

17 (e) Section 708-832 relating to theft in the third degree;
18 and

19 (f) Section 708-833.5(2) relating to misdemeanor
20 shoplifting,

21 and who has been convicted of any of the offenses enumerated
22 above on at least three prior and separate occasions within



1 three years of the date of the commission of the present
2 offense, shall be sentenced to no less than nine months of
3 imprisonment. Whenever a court sentences a defendant under this
4 subsection for an offense under section 707-733, the court shall
5 order the defendant to participate in a sex offender assessment
6 and, if recommended based on the assessment, participate in the
7 sex offender treatment program established by chapter 353E.

8 (5) The sentencing court may impose the above sentences
9 consecutive to any sentence imposed on the defendant for a prior
10 conviction, but such sentence shall be imposed concurrent to the
11 sentence imposed for the instant conviction. The court may
12 impose a lesser mandatory minimum period of imprisonment without
13 possibility of parole than that mandated by this section where
14 the court finds that strong mitigating circumstances warrant
15 such action. Strong mitigating circumstances shall include, but
16 shall not be limited to the provisions of section 706-621. The
17 court shall provide a written opinion stating its reasons for
18 imposing the lesser sentence.

19 (6) A person who is imprisoned in a correctional
20 institution pursuant to subsection (1) shall not be paroled
21 prior to the expiration of the mandatory minimum term of
22 imprisonment imposed pursuant to subsection (1).



- 1 (7) For purposes of this section:
- 2 (a) Convictions under two or more counts of an indictment
- 3 or complaint shall be considered a single conviction
- 4 without regard to when the convictions occur;
- 5 (b) A prior conviction in this or another jurisdiction
- 6 shall be deemed a felony conviction if it was
- 7 punishable by a sentence of death or of imprisonment
- 8 in excess of one year; and
- 9 (c) A conviction occurs on the date judgment is entered. "

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

13 SECTION 5. In codifying the new sections added by section
 14 2 of this Act, the revisor of statutes shall substitute
 15 appropriate section numbers for the letters used in designating
 16 the new sections in this Act.

17 SECTION 6. New statutory material is underscored.

18 SECTION 7. This Act shall take effect upon its approval.

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INTRODUCED BY: Bud Stonebraker

JAN 25 2006



HB 2890

Report Title:

Enhanced Sentencing; offenses

Description:

Provides for enhanced sentencing for recidivist behavior evidenced by prior convictions for certain criminal offenses.

