

JAN 25 2006

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# A BILL FOR AN ACT

RELATING TO PENALTIES IMPOSED ON REPEAT VIOLENT OR SEXUAL  
OFFENDERS.

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

- 1           SECTION 1. Section 706-606.5, Hawaii Revised Statutes, is  
2 amended to read as follows:
- 3           "**§706-606.5 Sentencing of repeat offenders.** (1) In this  
4 section, "qualified," with reference to a conviction for a prior  
5 felony offense, means:
- 6           (a) if the person convicted was not sentenced to a special  
7 term under section 706-667, the conviction occurred  
8 within:
- 9           (i) twenty years before the date of the instant  
10 offense, if the prior offense is murder in the  
11 first degree, attempted murder in the first  
12 degree, murder in the second degree, attempted  
13 murder in the second degree, or a class A felony;
- 14           (ii) ten years before the date of the instant offense,  
15 if the prior offense is a class B felony;



1           (iii) five years before the date of the instant  
2           offense, if the prior offense is a class C felony  
3           offense enumerated in subsection (2); or

4           (iv) within the period ending on the date of the  
5           instant offense and equal in length to the  
6           maximum term of imprisonment possible for the  
7           prior offense, if that offense is under federal  
8           law or the laws of another state; or

9           (b) if the person convicted was sentenced to a special  
10           term under section 706-667, the conviction occurred  
11           within:

12           (i) eight years before the date of the instant  
13           offense, if the prior offense is a class A  
14           felony;

15           (ii) five years before the date of the instant  
16           offense, if the prior offense is a class B  
17           felony; or

18           (iii) four years before the date of the instant  
19           offense, if the prior offense is a class C felony  
20           offense enumerated above.

21           (2) Notwithstanding section 706-669 and any other law to  
22 the contrary, any person convicted of murder in the second

1 degree, any class A felony, any class B felony, or any of the  
2 following class C felonies: section 188-23 relating to  
3 possession or use of explosives, electrofishing devices, and  
4 poisonous substances in state waters; section 707-703 relating  
5 to negligent homicide in the first degree; 707-711 relating to  
6 assault in the second degree; 707-713 relating to reckless  
7 endangering in the first degree; 707-716 relating to terroristic  
8 threatening in the first degree; 707-721 relating to unlawful  
9 imprisonment in the first degree; [~~707-732 relating to sexual  
10 assault or rape in the third degree;~~] 707-735 relating to sodomy  
11 in the third degree; 707-736 relating to sexual abuse in the  
12 first degree; 707-751 relating to promoting child abuse in the  
13 second degree; 707-766 relating to extortion in the second  
14 degree; 708-811 relating to burglary in the second degree; 708-  
15 821 relating to criminal property damage in the second degree;  
16 708-831 relating to theft in the first degree as amended by Act  
17 68, Session Laws of Hawaii 1981; 708-831 relating to theft in  
18 the second degree; 708-835.5 relating to theft of livestock;  
19 708-836 relating to unauthorized control of propelled vehicle;  
20 708-852 relating to forgery in the second degree; 708-854  
21 relating to criminal possession of a forgery device; 708-875  
22 relating to trademark counterfeiting; 710-1071 relating to



1 intimidating a witness; 711-1103 relating to riot; 712-1203  
2 relating to promoting prostitution in the second degree; 712-  
3 1221 relating to gambling in the first degree; 712-1224 relating  
4 to possession of gambling records in the first degree; 712-1243  
5 relating to promoting a dangerous drug in the third degree; 712-  
6 1247 relating to promoting a detrimental drug in the first  
7 degree; 134-7 relating to ownership or possession of firearms or  
8 ammunition by persons convicted of certain crimes; 134-8  
9 relating to ownership, etc., of prohibited weapons; 134-9  
10 relating to permits to carry, or who is convicted of attempting  
11 to commit murder in the second degree, any class A felony, any  
12 class B felony, or any of the class C felony offenses enumerated  
13 above and who has a qualified (as defined in subsection (1)) or  
14 eligible (as defined in section 706-606.6(1)) prior conviction  
15 or prior convictions for the following felonies, including an  
16 attempt to commit the same: murder, murder in the first or  
17 second degree, a class A felony, a class B felony, any of the  
18 class C felony offenses enumerated above, or any felony  
19 conviction of another jurisdiction shall be sentenced to a  
20 mandatory minimum period of imprisonment without possibility of  
21 parole during such period as follows:



1 (a) [~~One prior~~ Special felony (as defined in section 706-  
2 606.6(1)) preceded by one eligible special felony  
3 conviction:

4 (i) Where the instant conviction is for a special  
5 class A felony and is preceded by exactly one  
6 eligible special felony conviction--forty years;

7 (ii) Where the instant conviction is for a special  
8 class B felony and is preceded by exactly one  
9 eligible special felony conviction--thirty years;

10 (iii) Where the instant conviction is for a special  
11 class C felony and is preceded by exactly one  
12 eligible special felony conviction--ten years.

13 (b) Special felony preceded by two eligible special felony  
14 convictions:

15 (i) Where the instant conviction is for a special  
16 class A felony and is preceded by exactly two  
17 eligible special felony convictions--thirty  
18 years;

19 (ii) Where the instant conviction is for a special  
20 class B felony and is preceded by exactly two  
21 eligible special felony convictions--fifteen  
22 years;



1           (iii) Where the instant conviction is for a special  
2                           class C felony and is preceded by exactly two  
3                           eligible special felony convictions--five years.

4       (c) Special felony preceded by three or more eligible  
5           special felony convictions:

6           (i) Where the instant conviction is for a special  
7                           class A felony, is preceded by three or more  
8                           eligible special felony convictions, and section  
9                           706-661 applies--thirty years;

10          (ii) Where the instant conviction is for a special  
11                           class B felony, is preceded by three or more  
12                           eligible special felony convictions, and section  
13                           706-661 applies--fifteen years;

14          (iii) Where the instant conviction is for a  
15                           special class C felony, is preceded by three or more  
16                           eligible special felony convictions, and section  
17                           706-661 applies--five years.

18       (d) Murder in the second degree or class A, B, or C felony  
19           preceded by one qualified felony conviction:

20           (i) Where the instant conviction is for murder in the  
21                           second degree or attempted murder in the second

1                   degree and is preceded by exactly one qualified  
2                   felony conviction--~~[ten]~~ fifteen years;

3           (ii) Where the instant conviction is for a class A  
4           felony and is preceded by exactly one qualified  
5           felony conviction, but the conditions of paragraph  
6           (a) (i) do not hold--six years, eight months;

7           (iii) Where the instant conviction is for a class B  
8           felony and is preceded by exactly one qualified  
9           felony conviction, but the conditions of paragraph  
10           (a) (ii) do not hold--three years, four months;

11           (iv) Where the instant conviction is for a class C  
12           felony offense enumerated above and is preceded by  
13           exactly one qualified felony conviction, but the  
14           conditions of paragraph (a) (iii) do not hold--one  
15           year, eight months;

16       ~~[(b) Two prior]~~ (e) Murder in the second degree or class  
17           A, B, or C felony preceded by two qualified felony  
18           convictions:

19           (i) Where the instant conviction is for murder in the  
20           second degree or attempted murder in the second  
21           degree and is preceded by exactly two qualified  
22           felony convictions--~~[twenty]~~ forty years;



1 (ii) Where the instant conviction is for a class A  
2 felony and is preceded by exactly two qualified  
3 felony convictions, but the conditions of  
4 paragraph (b)(i) do not hold--thirteen years, four  
5 months;

6 (iii) Where the instant conviction is for a class B  
7 felony and is preceded by exactly two qualified  
8 felony convictions, but the conditions of  
9 paragraph (b)(ii) do not hold--three years, four  
10 months;

11 (iv) Where the instant conviction is for a class C  
12 felony offense enumerated above and is preceded by  
13 exactly two qualified felony convictions, but the  
14 conditions of paragraph (b)(iii) do not hold--  
15 three years, four months;

16 [~~e~~] ~~Three~~ (f) Murder in the second degree or class A, B,  
17 or C felony preceded by three or more qualified prior  
18 felony convictions:

19 (i) Where the instant conviction is for murder in the  
20 second degree or attempted murder in the second  
21 degree and is preceded by three or more qualified  
22 felony convictions--~~thirty~~ forty years;





1 (ii) Where the instant conviction is for a class A  
2 felony and is preceded by three or more qualified  
3 felony convictions, but the conditions of  
4 paragraph (c) (i) do not hold--twenty years;

5 (iii) Where the instant conviction is for a class B  
6 felony and is preceded by three or more qualified  
7 felony convictions, but the conditions of  
8 paragraph (c) (ii) do not hold--ten years;

9 (iv) Where the instant conviction is for a class C  
10 felony offense enumerated above and is preceded by  
11 three or more qualified felony convictions, but  
12 the conditions of paragraph (c) (iii) do not hold--  
13 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)]~~ (3) 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~~](4) The sentencing court may impose the above  
9 sentences consecutive to any sentence imposed on the defendant  
10 for a prior conviction, but such sentence shall be imposed  
11 concurrent to the sentence imposed for the instant conviction.  
12 The court may impose a lesser mandatory minimum period of  
13 imprisonment without possibility of parole than that mandated by  
14 this section where the court finds that strong mitigating  
15 circumstances warrant such action. Strong mitigating  
16 circumstances shall include, but shall not be limited to the  
17 provisions of section 706-621. The court shall provide a  
18 written opinion stating its reasons for imposing the lesser  
19 sentence.

20 [~~6~~](5) A person who is imprisoned in a correctional  
21 institution pursuant to subsection (1) shall not be paroled



1 prior to the expiration of the mandatory minimum term of  
2 imprisonment imposed pursuant to subsection (1).

3 ~~[(7)]~~ (6) For purposes of this section:

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

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

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

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

14 "[+]§706-606.6[+] **Repeat violent and sexual offender;**  
15 **enhanced sentence.** (1) In this section:

16 (a) "Special," with reference to a felony, class A felony,  
17 class B felony, or class C felony, means,  
18 respectively:

19 (i) belonging to the set of felony offenses in  
20 section 707-701.5, 707-702, 707-710, 707-711,  
21 707-720, 707-730, 707-731, 707-732, 707-733.5,  
22 707-750, 708-810, 708-820, or 708-840;



1           (ii) belonging to the subset of class A felonies in  
2           the set (namely, the felony offenses in section  
3           707-720 (unless reduced to a class B felony  
4           pursuant to subsection (3) thereof), 707-730,  
5           707-733.5, 707-750, or 708-840);

6           (iii) belonging to the subset of class B felonies in  
7           the set (namely, the felony offenses in section  
8           707-702, 707-710, 707-720 (if reduced from a  
9           class A felony to a class B felony pursuant to  
10           subsection (3) thereof), 707-731, 708-810, or  
11           708-820); or

12           (iv) belonging to the set of class C felonies in the  
13           set (namely, the felony offenses in section 707-  
14           711 or 707-732).

15           (b) "Eligible," with reference to a conviction for a prior  
16           special felony offense, means the conviction occurred  
17           within:

18           (i) twenty years before the date of the instant  
19           offense, if the prior offense is under section  
20           707-701.5 or is a special class A felony;

1           (ii) ten years before the date of the instant offense,  
2                   if the prior offense is a special class B felony;

3                   or

4           (iii) five years before the date of the instant  
5                   offense, if the prior offense is a special class  
6                   C felony.

7           (c) "Eligible," with reference to a conviction for a prior  
8                   offense under federal law or the laws of another  
9                   state, which offense is comparable to a special felony  
10                  offense, means the conviction occurred within the  
11                  period ending on the date of the instant offense and  
12                  equal in length to the maximum term of imprisonment  
13                  possible for the prior offense under the appropriate  
14                  jurisdiction.

15           ~~[(1)]~~ (2) Notwithstanding any other provision of law to the  
16           contrary, any person who is convicted of ~~[an offense under~~  
17           ~~section 707-701.5, 707-702, 707-730, 707-731, 707-732, 707-~~  
18           ~~733.5, 707-750, or 708-840, after having been convicted on] a~~  
19           special felony offense and has at least three prior and separate  
20           ~~{occasions of an offense under section 707-701.5, 707-702, 707-~~  
21           ~~710, 707-711, 707-730, 707-731, 707-732, 707-733.5, 707-750, or~~  
22           ~~708-840, or of an offense] eligible convictions of:~~



- 1       (a) special felonies; or
- 2       (b) offenses under federal law or the laws of another
- 3             state that [~~is~~] are comparable to [~~an offense under~~
- 4             ~~section 707-701.5, 707-702, 707-710, 707-711, 707-730,~~
- 5             ~~707-731, 707-732, 707-733.5, 707-750, or 708-840]~~
- 6             special felonies,

7 shall be sentenced to an extended term of imprisonment as  
8 provided in section 706-661.

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

12       ~~(a) For an offense under section 707-701.5, 707-702, 707-~~  
13 ~~730, 707-733.5, 707-750, or 708-840, within the past~~  
14 ~~twenty years from the date of the instant offense;~~

15       ~~(b) For an offense under section 707-710 or 707-731,~~  
16 ~~within the past ten years from the date of the instant~~  
17 ~~offense;~~

18       ~~(c) For an offense under section 707-711 or 707-732,~~  
19 ~~within the past five years from the date of the~~  
20 ~~instant offense; or~~

21       ~~(d) For an offense under federal law or the laws of~~  
22 ~~another state that is comparable to an offense under~~





1           ~~section 707-701.5, 707-702, 707-710, 707-711, 707-730,~~  
 2           ~~707-731, 707-732, 707-733.5, 707-750, or 708-840,~~  
 3           ~~within the maximum term of imprisonment possible under~~  
 4           ~~the appropriate jurisdiction.]"~~

5           SECTION 3. Section 706-661, Hawaii Revised Statutes, is  
 6 amended to read as follows:

7           "**§706-661 Sentence of imprisonment for special felony;**  
 8 **extended terms.** (1) In the cases designated in section  
 9 706-662, a person who has been convicted of a special felony (as  
 10 defined in section 706-606.6(1)) may be sentenced to an extended  
 11 indeterminate term of imprisonment. When ordering such a  
 12 sentence, the court shall impose the maximum length of  
 13 imprisonment which shall be as follows:

14           ~~[(1)]~~ (a) For murder in the second degree--life without the  
 15 possibility of parole;

16           ~~[(2)]~~ (b) For a class A felony--indeterminate life term of  
 17 imprisonment;

18           ~~[(3)]~~ (c) For a class B felony--indeterminate ~~[twenty-year]~~  
 19 forty-year term of imprisonment; and

20           ~~[(4)]~~ (d) For a class C felony--indeterminate ~~[ten-year]~~  
 21 fifteen-year term of imprisonment.



1        (2) The minimum length of imprisonment for [~~paragraphs~~  
 2   ~~(2), (3), and (4)~~] subsection (1)(a)-(d) shall be [~~determined by~~  
 3   ~~the Hawaii paroling authority in accordance with section 706-~~  
 4   ~~669.] as set forth in section 706-606.5."~~

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

7        SECTION 5. This Act shall take effect upon its approval.

8  
 9        INTRODUCED BY:

*[Handwritten signature]*

*[Handwritten signature]*

*Norman Sabanfo*

*Will Espino*

*Franzanne Chun Oakland*

*Yee Chan*

*Gordon*

10

**Report Title:**

Minimum penalties for repeat violent or sexual offenders

**Description:**

Establishes minimum penalties for repeat violent or sexual offenders higher than existing minimum penalties for repeat offenders in general.

