

JAN 24 2007

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 ~~(1)~~ (2) Notwithstanding section 706-669 and any other law
22 to 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 second degree; section 707-711
6 relating to assault in the second degree; section 707-713
7 relating to reckless endangering in the first degree; section
8 707-716 relating to terroristic threatening in the first degree;
9 section 707-721 relating to unlawful imprisonment in the first
10 degree; [~~section 707-732 relating to sexual assault or rape in~~
11 ~~the third degree,~~]; section 707-752 relating to promoting child
12 abuse in the third degree; section 707-766 relating to extortion
13 in the second degree; section 708-811 relating to burglary in
14 the second degree; section 708-821 relating to criminal property
15 damage in the second degree; section 708-831 relating to theft
16 in the first degree as amended by Act 68, Session Laws of Hawaii
17 1981; section 708-831 relating to theft in the second degree;
18 section 708-835.5 relating to theft of livestock; section 708-
19 836 relating to unauthorized control of propelled vehicle;
20 section 708-852 relating to forgery in the second degree;
21 section 708-854 relating to criminal possession of a forgery
22 device; section 708-875 relating to trademark counterfeiting;



1 section 710-1071 relating to intimidating a witness; section
2 711-1103 relating to riot; section 712-1203 relating to
3 promoting prostitution in the second degree; section 712-1221
4 relating to gambling in the first degree; section 712-1224
5 relating to possession of gambling records in the first degree;
6 section 712-1243 relating to promoting a dangerous drug in the
7 third degree; section 712-1247 relating to promoting a
8 detrimental drug in the first degree; section 134-7 relating to
9 ownership or possession of firearms or ammunition by persons
10 convicted of certain crimes; section 134-8 relating to
11 ownership, etc., of prohibited weapons; section 134-9 relating
12 to permits to carry, or who is convicted of attempting to commit
13 murder in the second degree, any class A felony, any class B
14 felony, or any of the class C felony offenses enumerated above
15 and who has a qualified (as defined in subsection (1)) or
16 eligible (as defined in section 706-606.6(1)) prior conviction
17 or prior convictions for the following felonies, including an
18 attempt to commit the same: murder, murder in the first or
19 second degree, a class A felony, a class B felony, any of the
20 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] Special felony (as defined in section 706-
4 606.6(1)) preceded by one eligible special felony
5 conviction:

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

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

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

15 (b) Special felony preceded by two eligible special felony
16 convictions:

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

21 (ii) Where the instant conviction is for a special
22 class B felony and is preceded by exactly two



1 eligible special felony convictions--fifteen
2 years;

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

6 (c) Special felony preceded by three or more eligible
7 special felony convictions:

8 (i) Where the instant conviction is for a special
9 class A felony, is preceded by three or more
10 eligible special felony convictions, and section
11 706-661 applies--thirty years;

12 (ii) Where the instant conviction is for a special
13 class B felony, is preceded by three or more
14 eligible special felony convictions, and section
15 706-661 applies--fifteen years;

16 (iii) Where the instant conviction is for a
17 special class C felony, is preceded by three or more
18 eligible special felony convictions, and section
19 706-661 applies--five years.

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



1 (i) Where the instant conviction is for murder in the
2 second degree or attempted murder in the second
3 degree and is preceded by exactly one qualified
4 felony conviction--~~ten~~ fifteen years;

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

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

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

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

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



1 degree and is preceded by exactly two qualified
2 felony convictions-- [~~twenty~~] forty years;

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

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

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

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

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



1 degree and is preceded by three or more qualified
2 felony convictions-- [thirty] forty years;

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

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

11 (iv) Where the instant conviction is for a class C
12 felony offense enumerated above and is preceded by
13 three or more qualified felony convictions, but
14 the conditions of paragraph (c) (iii) do not hold--
15 five years.

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

20 ~~(a) Within twenty years after a prior felony conviction~~
21 ~~where the prior felony conviction was for murder in~~



- 1 ~~the first degree or attempted murder in the first~~
- 2 ~~degree;~~
- 3 ~~(b) Within twenty years after a prior felony conviction~~
- 4 ~~where the prior felony conviction was for murder in~~
- 5 ~~the second degree or attempted murder in the second~~
- 6 ~~degree;~~
- 7 ~~(c) Within twenty years after a prior felony conviction~~
- 8 ~~where the prior felony conviction was for a class A~~
- 9 ~~felony;~~
- 10 ~~(d) Within ten years after a prior felony conviction where~~
- 11 ~~the prior felony conviction was for a class B felony;~~
- 12 ~~(e) Within five years after a prior felony conviction~~
- 13 ~~where the prior felony conviction was for a class C~~
- 14 ~~felony offense enumerated above;~~
- 15 ~~(f) Within the maximum term of imprisonment possible after~~
- 16 ~~a prior felony conviction of another jurisdiction.~~
- 17 ~~(3) If a person was sentenced for a prior felony~~
- 18 ~~conviction to a special term under section 706 667, then the~~
- 19 ~~person shall not be sentenced to a mandatory minimum period of~~
- 20 ~~imprisonment under this section unless the instant felony~~
- 21 ~~offense was committed during such period as follows:~~



- 1 ~~(a) Within eight years after a prior felony conviction~~
- 2 ~~where the prior felony conviction was for a class A~~
- 3 ~~felony;~~
- 4 ~~(b) Within five years after the prior felony conviction~~
- 5 ~~where the prior felony conviction was for a class B~~
- 6 ~~felony;~~
- 7 ~~(c) Within four years after the prior felony conviction~~
- 8 ~~where the prior felony conviction was for a class C~~
- 9 ~~felony offense enumerated above.~~

10 ~~(4)]~~ (3) Notwithstanding any other law to the contrary, any
11 person convicted of any of the following misdemeanor offenses:

- 12 (a) Section 707-712 relating to assault in the third
- 13 degree;
- 14 (b) Section 707-717 relating to terroristic threatening in
- 15 the second degree;
- 16 (c) Section 707-733 relating to sexual assault in the
- 17 fourth degree;
- 18 (d) Section 708-822 relating to criminal property damage
- 19 in the third degree;
- 20 (e) Section 708-832 relating to theft in the third degree;
- 21 and



1 (f) Section 708-833.5(2) relating to misdemeanor
2 shoplifting,
3 and who has been convicted of any of the offenses enumerated
4 above on at least three prior and separate occasions within
5 three years of the date of the commission of the present
6 offense, shall be sentenced to no less than nine months of
7 imprisonment. Whenever a court sentences a defendant under this
8 subsection for an offense under section 707-733, the court shall
9 order the defendant to participate in a sex offender assessment
10 and, if recommended based on the assessment, participate in the
11 sex offender treatment program established by chapter 353E.

12 [~~4~~](4) The sentencing court may impose the above
13 sentences consecutive to any sentence imposed on the defendant
14 for a prior conviction, but such sentence shall be imposed
15 concurrent to the sentence imposed for the instant conviction.
16 The court may impose a lesser mandatory minimum period of
17 imprisonment without possibility of parole than that mandated by
18 this section where the court finds that strong mitigating
19 circumstances warrant such action. Strong mitigating
20 circumstances shall include, but shall not be limited to the
21 provisions of section 706-621. The court shall provide a



1 written opinion stating its reasons for imposing the lesser
2 sentence.

3 ~~[(6)]~~ (5) A person who is imprisoned in a correctional
4 institution pursuant to subsection (1) shall not be paroled
5 prior to the expiration of the mandatory minimum term of
6 imprisonment imposed pursuant to subsection (1).

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

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

11 (b) A prior conviction in this or another jurisdiction
12 shall be deemed a felony conviction if it was
13 punishable by a sentence of death or of imprisonment
14 in excess of one year; and

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

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

18 "[+]§706-606.6[+] Repeat violent and sexual offender;

19 enhanced sentence. (1) In this section:

20 (a) "Special," with reference to a felony, class A felony,
21 class B felony, or class C felony, means,
22 respectively:



- 1 (i) belonging to the set of felony offenses in
2 section 707-701.5, 707-702, 707-710, 707-711,
3 707-720, 707-730, 707-731, 707-732, 707-733.5,
4 707-750, 708-810, 708-820, or 708-840;
- 5 (ii) belonging to the subset of class A felonies in
6 the set (namely, the felony offenses in section
7 707-720 (unless reduced to a class B felony
8 pursuant to subsection (3) thereof), 707-730,
9 707-733.5, 707-750, or 708-840);
- 10 (iii) belonging to the subset of class B felonies in
11 the set (namely, the felony offenses in section
12 707-702, 707-710, 707-720 (if reduced from a
13 class A felony to a class B felony pursuant to
14 subsection (3) thereof), 707-731, 708-810, or
15 708-820); or
- 16 (iv) belonging to the set of class C felonies in the
17 set (namely, the felony offenses in section 707-
18 711 or 707-732).
- 19 (b) "Eligible," with reference to a conviction for a prior
20 special felony offense, means the conviction occurred
21 within:



1 (i) twenty years before the date of the instant
2 offense, if the prior offense is under section
3 707-701.5 or is a special class A felony;

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

6 or

7 (iii) five years before the date of the instant
8 offense, if the prior offense is a special class
9 C felony.

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

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



1 ~~{occasions of an offense under section 707 701.5, 707 702, 707-~~
2 ~~710, 707 711, 707 730, 707 731, 707 732, 707 733.5, 707 750, or~~
3 ~~708 840, or of an offense]~~ eligible convictions of:

4 (a) special felonies; or

5 (b) offenses under federal law or the laws of another
6 state that [~~is~~] are comparable to [~~an offense under~~
7 ~~section 707 701.5, 707 702, 707 710, 707 711, 707 730,~~
8 ~~707 731, 707 732, 707 733.5, 707 750, or 708 840]~~

9 special felonies,

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

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

15 (a) ~~For an offense under section 707 701.5, 707 702, 707-~~
16 ~~730, 707 733.5, 707 750, or 708 840, within the past~~
17 ~~twenty years from the date of the instant offense;~~

18 (b) ~~For an offense under section 707 710 or 707 731,~~
19 ~~within the past ten years from the date of the instant~~
20 ~~offense;~~



- 1 ~~(c) For an offense under section 707-711 or 707-732,~~
 2 ~~within the past five years from the date of the~~
 3 ~~instant offense; or~~
- 4 ~~(d) For an offense under federal law or the laws of~~
 5 ~~another state that is comparable to an offense under~~
 6 ~~section 707-701.5, 707-702, 707-710, 707-711, 707-730,~~
 7 ~~707-731, 707-732, 707-733.5, 707-750, or 708-840,~~
 8 ~~within the maximum term of imprisonment possible under~~
 9 ~~the appropriate jurisdiction.] "~~

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

12 "§706-661 Sentence of imprisonment for special felony;
 13 extended terms. (1) In the cases designated in section
 14 706-662, a person who has been convicted of a special felony (as
 15 defined in section 706-606.6(1)) may be sentenced to an extended
 16 indeterminate term of imprisonment. When ordering such a
 17 sentence, the court shall impose the maximum length of
 18 imprisonment which shall be as follows:

- 19 ~~[(1)]~~ (a) For murder in the second degree--life without the
 20 possibility of parole;
- 21 ~~[(2)]~~ (b) For a class A felony--indeterminate life term of
 22 imprisonment;



1 ~~[(3)]~~ (c) For a class B felony--indeterminate [~~twenty-year~~
 2 forty-year term of imprisonment; and
 3 ~~[(4)]~~ (d) For a class C felony--indeterminate [~~ten-year~~
 4 fifteen-year term of imprisonment.

5 (2) The minimum length of imprisonment for [~~paragraphs~~
 6 ~~(2), (3), and (4)]~~ subsection (1)(a)-(d) shall be [~~determined by~~
 7 ~~the Hawaii paroling authority in accordance with section 706-~~
 8 ~~669.]~~ as set forth in section 706-606.5."

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

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

12
 13

INTRODUCED BY: *Beckham*
Palu
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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.

