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# A BILL FOR AN ACT

RELATING TO SENTENCING OF REPEAT OFFENDERS.

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

1           SECTION 1. The current law on sentencing of repeat  
2 offenders (section 706-606.5, Hawaii Revised Statutes), known as  
3 mandatory minimum sentencing, was originally enacted by Act 181,  
4 Session Laws of Hawaii 1976. With respect to this legislation,  
5 the Committee on Conference stated: "Your Committee finds that  
6 the high incidence of repeated offenses by previously convicted  
7 persons within the State of Hawaii presents a clear danger to  
8 its citizens. In particular, your Committee concurs that  
9 necessary steps should be taken so that any person convicted of  
10 some of the most serious and reprehensible felonies as defined  
11 by the Hawaii Penal Code be sentenced, for each conviction after  
12 the first conviction to a mandatory sentence without possibility  
13 of parole."

14           Act 181 identified ten felonies deemed to justify the  
15 imposition of its mandatory sentencing requirements. Section  
16 706-606.5, Hawaii Revised Statutes, now specifies in excess of  
17 thirty-six felonies.



1           The results of a 2008 poll released by Families Against  
2 Mandatory Minimums shows widespread support for ending mandatory  
3 minimum sentences for nonviolent offenses. Seventy-eight per  
4 cent of Americans, or nearly eight Americans in ten, agree that  
5 the courts, not Congress, should determine an individual's  
6 prison sentence. Fifty-nine per cent, or nearly six Americans  
7 in ten, oppose mandatory minimum sentences for nonviolent  
8 offenders. Fifty-seven per cent of Americans polled would  
9 likely vote for a congressional candidate who would eliminate  
10 all mandatory minimum sentencing for nonviolent crimes. Based  
11 on the poll, Families Against Mandatory Minimums also concluded  
12 that mandatory minimum sentences have not discouraged drug use;  
13 have not reduced drug trafficking; have created soaring state  
14 and federal corrections costs; impose substantial indirect costs  
15 on families by imprisoning spouses, parents, and breadwinners  
16 for lengthy periods of time; are not applied evenly, thus  
17 disproportionately affecting minorities and resulting in vastly  
18 different sentences for equally blameworthy offenders; and usurp  
19 judicial discretion.

20           The current sentencing system in Hawaii has had a  
21 significant impact on native Hawaiians and Pacific islanders,  
22 who are incarcerated at a disproportionate rate to their



1 percentage of the population. Mandatory minimum sentences  
2 imposed on nonviolent offenders are helping to fuel the racial  
3 disparities in Hawaii's prison population. Mandatory minimum  
4 sentences have also fueled a dramatic increase in the  
5 incarceration of women.

6 The American Bar Association Justice Kennedy Commission, in  
7 a 2003 Report to the House of Delegates, recommended, among  
8 other things, that:

- 9 (1) Lengthy periods of incarceration should be reserved  
10 for offenders who pose the greatest danger to the  
11 community and who commit the most serious offenses;
- 12 (2) Alternatives to incarceration should be provided when  
13 offenders pose minimum risk to the community and  
14 appear likely to benefit from rehabilitation efforts;  
15 and
- 16 (3) Mandatory minimum sentencing statutes should be  
17 repealed.

18 The legislature believes that a better, more cost-effective  
19 "alternative sentencing" approach would be to treat nonviolent  
20 offenses in the same manner as other serious felonies, meaning  
21 that sentences would be determined by a judge with access to the



1 offender's criminal record and knowledge of the circumstances  
2 involved in the offense.

3       Clearly, some offenders will reenter the prison system upon  
4 release, despite the best intentions of state agencies, law  
5 enforcement, nonprofit service providers, faith-based  
6 initiatives, and the offenders themselves. However, the  
7 "alternative sentencing" approach will at least provide judges  
8 with the authority to use discretion when sentencing offenders.  
9 Additionally, "alternative sentencing" will make available an  
10 array of programs, strategies, and tactics to help offenders  
11 become successful members of society.

12       Alternative sentencing also reduces the cost of  
13 corrections. Diverting individuals away from prison saves money  
14 and in many cases provides a better solution to offenders and  
15 society because it makes available effective services that  
16 enable offenders to become productive citizens.

17       The purpose of this Act is to make mandatory minimum  
18 sentencing of repeat offenders discretionary.

19       SECTION 2. Section 706-606.5, Hawaii Revised Statutes, is  
20 amended as follows:

21       1. By amending subsection (1) to read:



1           "(1) Notwithstanding section 706-669 and any other law to  
2 the contrary, any person convicted of murder in the second  
3 degree, any class A felony, any class B felony, or any of the  
4 following class C felonies: section 188-23 relating to  
5 possession or use of explosives, electrofishing devices, and  
6 poisonous substances in state waters; section 386-98(d)(1)  
7 relating to fraud violations and penalties; section 431:10A-  
8 131(b)(2) relating to insurance fraud; section 431:10C-  
9 307.7(b)(2) relating to insurance fraud; section 432:1-106(b)(2)  
10 relating to insurance fraud; section 432D-18.5(b)(2) relating to  
11 insurance fraud; section 707-703 relating to negligent homicide  
12 in the second degree; section 707-711 relating to assault in the  
13 second degree; section 707-713 relating to reckless endangering  
14 in the first degree; section 707-716 relating to terroristic  
15 threatening in the first degree; section 707-721 relating to  
16 unlawful imprisonment in the first degree; section 707-732  
17 relating to sexual assault or rape in the third degree; section  
18 707-752 relating to promoting child abuse in the third degree;  
19 section 707-757 relating to electronic enticement of a child in  
20 the second degree; section 707-766 relating to extortion in the  
21 second degree; section 708-811 relating to burglary in the  
22 second degree; section 708-821 relating to criminal property



1 damage in the second degree; section 708-831 relating to theft  
2 in the first degree as amended by Act 68, Session Laws of Hawaii  
3 1981; section 708-831 relating to theft in the second degree;  
4 section 708-835.5 relating to theft of livestock; section 708-  
5 836 relating to unauthorized control of propelled vehicle;  
6 section 708-839.8 relating to identity theft in the third  
7 degree; section 708-839.55 relating to unauthorized possession  
8 of confidential personal information; section 708-852 relating  
9 to forgery in the second degree; section 708-854 relating to  
10 criminal possession of a forgery device; section 708-875  
11 relating to trademark counterfeiting; section 710-1071 relating  
12 to intimidating a witness; section 711-1103 relating to riot;  
13 section 712-1203 relating to promoting prostitution in the  
14 second degree; section 712-1221 relating to gambling in the  
15 first degree; section 712-1224 relating to possession of  
16 gambling records in the first degree; section 712-1243 relating  
17 to promoting a dangerous drug in the third degree; section 712-  
18 1247 relating to promoting a detrimental drug in the first  
19 degree; section 846E-9 relating to failure to comply with  
20 covered offender registration requirements; section 134-7  
21 relating to ownership or possession of firearms or ammunition by  
22 persons convicted of certain crimes; section 134-8 relating to



1 ownership, etc., of prohibited weapons; section 134-9 relating  
2 to permits to carry, or who is convicted of attempting to commit  
3 murder in the second degree, any class A felony, any class B  
4 felony, or any of the class C felony offenses enumerated above  
5 and who has a prior conviction or prior convictions for the  
6 following felonies, including an attempt to commit the same:  
7 murder, murder in the first or second degree, a class A felony,  
8 a class B felony, any of the class C felony offenses enumerated  
9 above, or any felony conviction of another jurisdiction, [~~shall~~]  
10 may be sentenced to a mandatory minimum period of imprisonment  
11 without possibility of parole during such period as follows:

12 (a) One prior felony conviction:

13 (i) Where the instant conviction is for murder in the  
14 second degree or attempted murder in the second  
15 degree--ten years;

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

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

20 (iv) Where the instant conviction is for a class C  
21 felony offense enumerated above--one year, eight  
22 months;



- 1 (b) Two prior felony convictions:
- 2 (i) Where the instant conviction is for murder in the
- 3 second degree or attempted murder in the second
- 4 degree--twenty years;
- 5 (ii) Where the instant conviction is for a class A
- 6 felony--thirteen years, four months;
- 7 (iii) Where the instant conviction is for a class B
- 8 felony--six years, eight months; and
- 9 (iv) Where the instant conviction is for a class C
- 10 felony offense enumerated above--three years,
- 11 four months;
- 12 (c) Three or more prior felony convictions:
- 13 (i) Where the instant conviction is for murder in the
- 14 second degree or attempted murder in the second
- 15 degree--thirty years;
- 16 (ii) Where the instant conviction is for a class A
- 17 felony--twenty years;
- 18 (iii) Where the instant conviction is for a class B
- 19 felony--ten years; and
- 20 (iv) Where the instant conviction is for a class C
- 21 felony offense enumerated above--five years."
- 22 2. By amending subsection (4) to read:





1           "(4) Notwithstanding any other law to the contrary, any  
2 person convicted of any of the following misdemeanor offenses:

3           (a) Section 707-712 relating to assault in the third  
4 degree;

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

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

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

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

13           (f) Section 708-833.5(2) relating to misdemeanor  
14 shoplifting,

15 and who has been convicted of any of the offenses enumerated  
16 above on at least three prior and separate occasions within  
17 three years of the date of the commission of the present  
18 offense, [~~shall~~] may be sentenced to a term of imprisonment that  
19 shall be no less than nine months [~~of imprisonment~~]. Whenever a  
20 court sentences a defendant under this subsection for an offense  
21 under section 707-733, the court shall order the defendant to  
22 participate in a sex offender assessment and, if recommended



1 based on the assessment, participate in the sex offender  
2 treatment program established by chapter 353E."

3 SECTION 3. Section 706-620, Hawaii Revised Statutes, is  
4 amended to read as follows:

5 **"§706-620 Authority to withhold sentence of imprisonment.**

6 A defendant who has been convicted of a crime may be sentenced  
7 to a term of probation unless:

8 (1) The crime is first or second degree murder or  
9 attempted first or second degree murder;

10 (2) The crime is a class A felony, except class A felonies  
11 defined in chapter 712, part IV, and by section 707-  
12 702;

13 [~~(3)~~] ~~The defendant is a repeat offender under section 706-~~  
14 ~~606.5;~~

15 ~~(4)]~~ (3) The defendant is a felony firearm offender as  
16 defined in section 706-660.1(2); or

17 [~~(5)]~~ (4) The crime involved the death of or the infliction  
18 of serious or substantial bodily injury upon a child,  
19 an elder person, or a handicapped person under section  
20 706-660.2."



1 SECTION 4. This Act does not affect rights and duties that  
2 matured, penalties that were incurred, and proceedings that were  
3 begun, before its effective date.

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

6 SECTION 6. This Act shall take effect on July 1, 2009.



**Report Title:**

Sentencing; Mandatory Minimum Terms

**Description:**

Changes the mandatory minimum sentencing of repeat offenders from mandatory to discretionary. (HB1780 HD1)

