
A BILL FOR AN ACT

RELATING TO THE DISPOSITION OF CONVICTED DEFENDANTS.

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)
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(d)(1) relating to fraud violations and penalties;
12 section 431:2-403(b)(2) relating to insurance fraud; section
13 707-703 relating to negligent homicide in the second degree;
14 section 707-711 relating to assault in the second degree;
15 section 707-713 relating to reckless endangering in the first
16 degree; section 707-716 relating to terroristic threatening in
17 the first degree; section 707-721 relating to unlawful
18 imprisonment in the first degree; section 707-732 relating to



1 sexual assault or rape in the third degree; section 707-752
2 relating to promoting child abuse in the third degree; section
3 707-757 relating to electronic enticement of a child in the
4 second degree; section 707-766 relating to extortion in the
5 second degree; section 708-811 relating to burglary in the
6 second degree; section 708-821 relating to criminal property
7 damage in the second degree; section 708-831 relating to theft
8 in the first degree as amended by Act 68, Session Laws of Hawaii
9 1981; section 708-831 relating to theft in the second degree;
10 section 708-835.5 relating to theft of livestock; section 708-
11 836 relating to unauthorized control of propelled vehicle;
12 section 708-839.8 relating to identity theft in the third
13 degree; section 708-839.55 relating to unauthorized possession
14 of confidential personal information; section 708-852 relating
15 to forgery in the second degree; section 708-854 relating to
16 criminal possession of a forgery device; section 708-875
17 relating to trademark counterfeiting; section 710-1071 relating
18 to intimidating a witness; section 711-1103 relating to riot;
19 section 712-1203 relating to promoting prostitution in the
20 second degree; section 712-1221 relating to gambling in the
21 first degree; section 712-1224 relating to possession of
22 gambling records in the first degree; section 712-1243 relating



1 to promoting a dangerous drug in the third degree; section 712-
2 1247 relating to promoting a detrimental drug in the first
3 degree; section 846E-9 relating to failure to comply with
4 covered offender registration requirements; section 134-7
5 relating to ownership or possession of firearms or ammunition by
6 persons convicted of certain crimes; section 134-8 relating to
7 ownership, etc., of prohibited weapons; section 134-9 relating
8 to permits to carry, or who is convicted of attempting to commit
9 murder in the second degree, any class A felony, any class B
10 felony, or any of the class C felony offenses enumerated above
11 and who has a prior conviction or prior convictions for the
12 following felonies, including an attempt to commit the same:
13 murder, murder in the first or second degree, a class A felony,
14 a class B felony, any of the class C felony offenses enumerated
15 above, or any felony conviction of another jurisdiction, shall
16 be sentenced to a mandatory minimum period of imprisonment
17 without possibility of parole during such period as follows:

18 (a) One prior felony conviction:

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



- 1 (ii) Where the instant conviction is for a class A
- 2 felony--six years, eight months;
- 3 (iii) Where the instant conviction is for a class B
- 4 felony--three years, four months; and
- 5 (iv) Where the instant conviction is for a class C
- 6 felony offense enumerated above--one year, eight
- 7 months;
- 8 (b) Two 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--twenty years;
- 12 (ii) Where the instant conviction is for a class A
- 13 felony--thirteen years, four months;
- 14 (iii) Where the instant conviction is for a class B
- 15 felony--six years, eight months; and
- 16 (iv) Where the instant conviction is for a class C
- 17 felony offense enumerated above--three years,
- 18 four months;
- 19 (c) Three or more 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--thirty years;



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

3 (iii) Where the instant conviction is for a class B
4 felony--ten years; and

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

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

11 (a) Within twenty years after a prior felony conviction
12 where the prior felony conviction was for murder in
13 the first degree or attempted murder in the first
14 degree;

15 (b) Within twenty years after a prior felony conviction
16 where the prior felony conviction was for murder in
17 the second degree or attempted murder in the second
18 degree;

19 (c) Within twenty years after a prior felony conviction
20 where the prior felony conviction was for a class A
21 felony;



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

3 (e) Within five years after a prior felony conviction
4 where the prior felony conviction was for a class C
5 felony offense enumerated above;

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

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

13 (a) Within eight years after a prior felony conviction
14 where the prior felony conviction was for a class A
15 felony;

16 (b) Within five years after the prior felony conviction
17 where the prior felony conviction was for a class B
18 felony;

19 (c) Within four years after the prior felony conviction
20 where the prior felony conviction was for a class C
21 felony offense enumerated above.



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 be sentenced to no less than nine months of
19 imprisonment. Whenever a court sentences a defendant under this
20 subsection for an offense under section 707-733, the court shall
21 order the defendant to participate in a sex offender assessment



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

3 (5) In addition to the sentences imposed in subsection
4 (1), the following conditions shall apply to any person
5 sentenced under this section for an offense under section 291E-
6 61.5:

7 (a) The sentencing court shall also require that the
8 offender be referred to the driver's education program
9 for an assessment, by a certified substance abuse
10 counselor, of the offender's substance abuse or
11 dependence and the need for appropriate treatment;
12 provided that:

13 (i) The counselor shall submit a report with
14 recommendations to the court and that the court
15 shall require the offender to obtain appropriate
16 treatment if the counselor's assessment
17 establishes the offender's substance abuse or
18 dependence; and

19 (ii) All costs for assessment and treatment shall be
20 borne by the offender;

21 (b) Notwithstanding any law to the contrary, whenever a
22 court revokes a person's driver's license pursuant to



1 this section for an offense under section 291E-61.5,
2 the examiner of drivers shall not grant to the person
3 a new driver's license until expiration of the period
4 of revocation determined by the court; provided that
5 after the period of revocation is completed, the
6 person may apply for and the examiner of drivers may
7 grant to the person a new driver's license; and

8 (c) Any person sentenced under this section for an offense
9 under section 291E-61.5 may be ordered to reimburse
10 the county for the cost of any blood or urine tests
11 conducted pursuant to section 291E-11; provided that
12 the court shall order the person to make restitution
13 in a lump sum, or in a series of prorated
14 installments, to the police department or other agency
15 incurring the expense of the blood or urine test.

16 As used in this subsection, the term "examiner of drivers"
17 has the same meaning as provided in section 286-2.

18 ~~(5)~~ (6) The sentencing court may impose the above
19 sentences consecutive to any sentence imposed on the defendant
20 for a prior conviction, but such sentence shall be imposed
21 concurrent to the sentence imposed for the instant conviction.
22 The court may impose a lesser mandatory minimum period of



1 imprisonment without possibility of parole than that mandated by
2 this section where the court finds that strong mitigating
3 circumstances warrant such action. Strong mitigating
4 circumstances shall include, but shall not be limited to the
5 provisions of section 706-621. The court shall provide a
6 written opinion stating its reasons for imposing the lesser
7 sentence.

8 ~~[(6)]~~ (7) A person who is imprisoned in a correctional
9 institution pursuant to subsection (1) shall not be paroled
10 prior to the expiration of the mandatory minimum term of
11 imprisonment imposed pursuant to subsection (1).

12 ~~[(7)]~~ (8) For purposes of this section:

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

16 (b) A prior conviction in this or another jurisdiction
17 shall be deemed a felony conviction if it was
18 punishable by a sentence of death or of imprisonment
19 in excess of one year; and

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



1 SECTION 2. 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 3. Statutory material to be repealed is bracketed
5 and stricken. New statutory material is underscored.

6 SECTION 4. This Act shall take effect upon its approval.
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AMT

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Report Title:

Sentencing of Repeat Offenders; Habitually Operating a Vehicle Under the Influence of an Intoxicant

Description:

Applies sentencing of repeat offenders guidelines to the offense of habitually operating a vehicle under the influence of an intoxicant.

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