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A BILL FOR AN ACT

RELATING TO DEFERRED ACCEPTANCE OF PLEA.

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

1 SECTION 1. Section 853-4, Hawaii Revised Statutes, as  
2 effective until December 31, 2010, is amended to read as  
3 follows:

4 "§853-4 Chapter not applicable; when. This chapter shall  
5 not apply when:

6 (1) The offense charged involves the intentional, knowing,  
7 reckless, or negligent killing of another person;

8 (2) The offense charged is:

9 (A) A felony that involves the intentional, knowing,  
10 or reckless bodily injury, substantial bodily  
11 injury, or serious bodily injury of another  
12 person; or

13 (B) A misdemeanor or petty misdemeanor that carries a  
14 mandatory minimum sentence and that involves the  
15 intentional, knowing, or reckless bodily injury,  
16 substantial bodily injury, or serious bodily  
17 injury of another person;

18 (3) The offense charged involves a conspiracy or

- 1           solicitation to intentionally, knowingly, or  
2           recklessly kill another person or to cause serious  
3           bodily injury to another person;
- 4           (4) The offense charged is a class A felony;
- 5           (5) The offense charged is nonprobationable;
- 6           (6) The defendant has been convicted of any offense  
7           defined as a felony by the Hawaii Penal Code or has  
8           been convicted for any conduct that if perpetrated in  
9           this State would be punishable as a felony;
- 10          (7) The defendant is found to be a law violator or  
11          delinquent child for the commission of any offense  
12          defined as a felony by the Hawaii Penal Code or for  
13          any conduct that if perpetrated in this State would  
14          constitute a felony;
- 15          (8) The defendant has a prior conviction for a felony  
16          committed in any state, federal, or foreign  
17          jurisdiction;
- 18          (9) A firearm was used in the commission of the offense  
19          charged;
- 20          (10) The defendant is charged with the distribution of a  
21          dangerous, harmful, or detrimental drug to a minor;
- 22          (11) The defendant has been charged with a felony offense

1 and has been previously granted deferred acceptance of  
2 guilty plea status or deferred acceptance of nolo  
3 contendere plea status for a prior offense, regardless  
4 of whether the period of deferral has already expired;

5 (12) The defendant has been charged with a misdemeanor  
6 offense and has been previously granted deferred  
7 acceptance of guilty plea status or deferred  
8 acceptance of nolo contendere plea status for a prior  
9 felony, misdemeanor, or petty misdemeanor for which  
10 the period of deferral has not yet expired;

11 (13) The offense charged is:

- 12 (A) Escape in the first degree;
- 13 (B) Escape in the second degree;
- 14 (C) Promoting prison contraband in the first degree;
- 15 (D) Promoting prison contraband in the second degree;
- 16 (E) Bail jumping in the first degree;
- 17 (F) Bail jumping in the second degree;
- 18 (G) Bribery;
- 19 (H) Bribery of a witness;
- 20 (I) Intimidating a witness;
- 21 (J) Bribery of or by a juror;
- 22 (K) Intimidating a juror;

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- 1 (L) Jury tampering;
- 2 (M) Promoting prostitution in the first degree;
- 3 (N) Promoting prostitution in the second degree;
- 4 (O) Promoting prostitution in the third degree;
- 5 (P) Abuse of family or household members;
- 6 (Q) Sexual assault in the second degree;
- 7 (R) Sexual assault in the third degree;
- 8 (S) A violation of an order issued pursuant to
- 9 chapter 586;
- 10 (T) Promoting child abuse in the second degree;
- 11 (U) Promoting child abuse in the third degree;
- 12 (V) Electronic enticement of a child in the first
- 13 degree; or
- 14 (W) Electronic enticement of a child in the second
- 15 degree;
- 16 (14) The defendant has been charged with:
- 17 (A) Knowingly or intentionally falsifying any report
- 18 required under chapter 11, subpart B of part XII,
- 19 with the intent to circumvent the law or deceive
- 20 the campaign spending commission; or
- 21 (B) Violating section 11-201 or 11-202; or
- 22 (15) The defendant holds a commercial driver's license and

1           has been charged with violating a traffic control law,  
2           other than a parking law, in connection with the  
3           operation of any type of motor vehicle.

4           The court may adopt by rule other criteria in this area."

5           SECTION 2. Section 853-4, Hawaii Revised Statutes, as  
6           effective on January 1, 2011, is amended to read as follows:

7           "§853-4 Chapter not applicable; when. This chapter shall  
8           not apply when:

9           (1) The offense charged involves the intentional, knowing,  
10           reckless, or negligent killing of another person;

11           (2) The offense charged is:

12           (A) A felony that involves the intentional, knowing,  
13           or reckless bodily injury, substantial bodily  
14           injury, or serious bodily injury of another  
15           person; or

16           (B) A misdemeanor or petty misdemeanor that carries a  
17           mandatory minimum sentence and that involves the  
18           intentional, knowing, or reckless bodily injury,  
19           substantial bodily injury, or serious bodily  
20           injury of another person;

21           (3) The offense charged involves a conspiracy or

- 1 solicitation to intentionally, knowingly, or  
2 recklessly kill another person or to cause serious  
3 bodily injury to another person;
- 4 (4) The offense charged is a class A felony;
- 5 (5) The offense charged is nonprobationable;
- 6 (6) The defendant has been convicted of any offense  
7 defined as a felony by the Hawaii Penal Code or has  
8 been convicted for any conduct that if perpetrated in  
9 this State would be punishable as a felony;
- 10 (7) The defendant is found to be a law violator or  
11 delinquent child for the commission of any offense  
12 defined as a felony by the Hawaii Penal Code or for  
13 any conduct that if perpetrated in this State would  
14 constitute a felony;
- 15 (8) The defendant has a prior conviction for a felony  
16 committed in any state, federal, or foreign  
17 jurisdiction;
- 18 (9) A firearm was used in the commission of the offense  
19 charged;
- 20 (10) The defendant is charged with the distribution of a  
21 dangerous, harmful, or detrimental drug to a minor;
- 22 (11) The defendant has been charged with a felony offense

1 and has been previously granted deferred acceptance of  
2 guilty plea status or deferred acceptance of nolo  
3 contendere plea status for a prior offense, regardless  
4 of whether the period of deferral has already expired;

5 (12) The defendant has been charged with a misdemeanor  
6 offense and has been previously granted deferred  
7 acceptance of guilty plea status or deferred  
8 acceptance of nolo contendere plea status for a prior  
9 felony, misdemeanor, or petty misdemeanor for which  
10 the period of deferral has not yet expired;

11 (13) The offense charged is:

- 12 (A) Escape in the first degree;  
13 (B) Escape in the second degree;  
14 (C) Promoting prison contraband in the first degree;  
15 (D) Promoting prison contraband in the second degree;  
16 (E) Bail jumping in the first degree;  
17 (F) Bail jumping in the second degree;  
18 (G) Bribery;  
19 (H) Bribery of a witness;  
20 (I) Intimidating a witness;  
21 (J) Bribery of or by a juror;  
22 (K) Intimidating a juror;

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- 1 (L) Jury tampering;
- 2 (M) Promoting prostitution in the first degree;
- 3 (N) Promoting prostitution in the second degree;
- 4 (O) Promoting prostitution in the third degree;
- 5 (P) Abuse of family or household members;
- 6 (Q) Sexual assault in the second degree;
- 7 (R) Sexual assault in the third degree;
- 8 (S) A violation of an order issued pursuant to
- 9 chapter 586;
- 10 (T) Promoting child abuse in the second degree;
- 11 (U) Promoting child abuse in the third degree;
- 12 (V) Electronic enticement of a child in the first
- 13 degree;
- 14 (W) Electronic enticement of a child in the second
- 15 degree; or
- 16 (X) An offense under part IV, chapter 291E;
- 17 (14) The defendant has been charged with:
- 18 (A) Knowingly or intentionally falsifying any report
- 19 required under chapter 11, subpart B of part XII,
- 20 with the intent to circumvent the law or deceive
- 21 the campaign spending commission; or
- 22 (B) Violating section 11-201 or 11-202; or



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1 (15) The defendant holds a commercial driver's license and  
2 has been charged with violating a traffic control law,  
3 other than a parking law, in connection with the  
4 operation of any type of motor vehicle.

5 The court may adopt by rule other criteria in this area."

6 SECTION 3. Statutory material to be repealed is bracketed  
7 and stricken. New statutory material is underscored.

8 SECTION 4. This Act shall take effect upon its approval,  
9 except that section 2 shall take effect on January 1, 2011.

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11  
12

INTRODUCED BY: Calvin H. Ay  
BY REQUEST

JAN 25 2010

**Report Title:**

Deferred Acceptance of Plea

**Description:**

Clarifies that the provisions precluding deferred acceptance of plea when a defendant has previously been granted a deferred acceptance of guilty plea status is also applicable when a defendant has previously been granted a deferred acceptance of nolo contendere ("no contest") plea status.

JUSTIFICATION SHEET

DEPARTMENT: Attorney General

TITLE: A BILL FOR AN ACT RELATING TO DEFERRED ACCEPTANCE OF PLEA.

PURPOSE: To clarify that the provisions precluding deferred acceptance of plea when a defendant has previously been granted a deferred acceptance of guilty plea status is also applicable when a defendant has previously been granted a deferred acceptance of nolo contendere ("no contest") plea status.

MEANS: Amend section 853-4, Hawaii Revised Statutes.

JUSTIFICATION: Section 853-4, Hawaii Revised Statutes, lists situations in which a deferred acceptance of plea is not applicable. Paragraphs 11 and 12 provide the following exclusions:

(11) The defendant has been charged with a felony offense and has been previously granted deferred acceptance of guilty plea status for a prior offense, regardless of whether the period of deferral has already expired; and

(12) The defendant has been charged with a misdemeanor offense and has been previously granted deferred acceptance of guilty plea status for a prior felony, misdemeanor, or petty misdemeanor for which the period of deferral has not yet expired.

These two provisions specifically restrict the availability of deferred acceptance of plea when a defendant has previously been granted a deferred acceptance of plea in a prior case. Defense attorneys have pointed out, however, that these restrictions only

refer to defendants who have been granted deferred acceptance of guilty pleas. Because the provisions do not specifically refer to defendants who have been granted deferred acceptance of nolo contendere pleas, defense attorneys have argued that defendants who have previously been granted deferred acceptance of nolo contendere pleas should not be precluded from another deferred plea.

There is no rational basis, however, to distinguish between deferred acceptance of guilty and nolo contendere pleas. This bill eliminates this inconsistency.

This bill amends two versions of section 853-4 because the current version set forth in section 1 of this bill will be amended by section 20 of Act 171, Session Laws of Hawaii 2008, effective on January 1, 2011, pursuant to section 13 of Act 88, Session Laws of Hawaii 2009. The amendment to that version, set forth in section 2 of this bill, will preserve the amendment to section 853-4 after January 1, 2011.

Impact on the public: This bill will clarify who is eligible for a deferred acceptance of plea.

Impact on the department and other agencies: This bill will clarify the law and thereby eliminate time and resources wasted by prosecutors, public defenders, and the courts on addressing the issue regarding prior deferred acceptance of nolo contendere pleas.

GENERAL FUND: None.

OTHER FUNDS: None.

PPBS PROGRAM DESIGNATION: None.

OTHER AFFECTED

AGENCIES:                   Judiciary, county prosecutors, Attorney  
                                  General, and the Office of the Public  
                                  Defender.

EFFECTIVE DATE:           Upon approval, except that section 2 of the  
                                  bill shall take effect on January 1, 2011.