

S.B. NO. 2666

JAN 25 2010

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

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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

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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

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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

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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

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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;
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- 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.

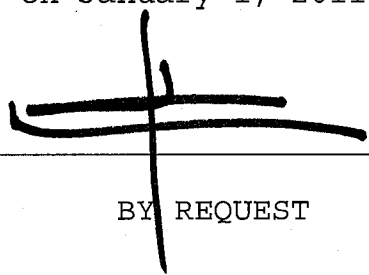
8 SECTION 4. This Act shall take effect upon its approval,
9 except that section 2 shall take effect on January 1, 2011.

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INTRODUCED BY: _____

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BY REQUEST

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.

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.