

JAN 23 2009

A BILL FOR AN ACT

RELATING TO REPEAT 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; and

18 (iii) Four years before the date of the instant
19 offense, if the prior offense is a class C felony
20 offense enumerated in subsection (2).

21 (2) Notwithstanding section 706-669 and any other law to
22 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 386-98(d)(1)
5 relating to fraud violations and penalties; section 431:10A-
6 131(b)(2) relating to insurance fraud; section 431:10C-
7 307.7(b)(2) relating to insurance fraud; section 432:1-106(b)(2)
8 relating to insurance fraud; section 432D-18.5(b)(2) relating to
9 insurance fraud; section 707-703 relating to negligent homicide
10 in the second degree; section 707-711 relating to assault in the
11 second degree; section 707-713 relating to reckless endangering
12 in the first degree; section 707-716 relating to terroristic
13 threatening in the first degree; section 707-721 relating to
14 unlawful imprisonment in the first degree; section 707-732
15 relating to sexual assault or rape in the third degree; section
16 707-752 relating to promoting child abuse in the third degree;
17 section 707-757 relating to electronic enticement of a child in
18 the second degree; section 707-766 relating to extortion in the
19 second degree; section 708-811 relating to burglary in the
20 second degree; section 708-821 relating to criminal property
21 damage in the second degree; section 708-831 relating to theft
22 in the first degree as amended by Act 68, Session Laws of Hawaii



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



1 murder in the second degree, any class A felony, any class B
2 felony, or any of the class C felony offenses enumerated above
3 and who has [~~a prior conviction or~~] any qualified or eligible
4 prior convictions under subsection (1) or section 706-606.6(1)
5 for the following felonies, including an attempt to commit the
6 same: murder, murder in the first or second degree, a class A
7 felony, a class B felony, any of the class C felony offenses
8 enumerated above, or any felony conviction of another
9 jurisdiction, shall be sentenced to a mandatory minimum period
10 of imprisonment without possibility of parole during such period
11 as follows:

12 (a) [~~One prior~~] Special felony as defined in section 706-
13 606.6(1) preceded by one eligible special felony
14 conviction:

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

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

21 and



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

4 (b) Special felony preceded by two eligible special felony
5 convictions:

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

10 (ii) Where the instant conviction is for a special
11 class B felony and is preceded by exactly two
12 eligible special felony convictions--fifteen
13 years;

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

17 (c) Special felony preceded by three or more eligible
18 special felony convictions:

19 (i) Where the instant conviction is for a special
20 class A felony, is preceded by three or more
21 eligible special felony convictions, and section
22 706-661 applies--thirty years;



1 (ii) Where the instant conviction is for a special
2 class B felony, is preceded by three or more
3 eligible special felony convictions, and section
4 706-661 applies--fifteen years; and

5 (iii) Where the instant conviction is for a special
6 class C felony, is preceded by three or more
7 eligible special felony convictions, and section
8 706-661 applies--five years.

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

11 (i) Where the instant conviction is for murder in the
12 second degree or attempted murder in the second
13 degree and is preceded by exactly one qualified
14 felony conviction--~~ten~~ fifteen years;

15 (ii) Where the instant conviction is for a class A
16 felony and is preceded by exactly one qualified
17 felony conviction, but the conditions of
18 paragraph (a) (i) do not apply--six years, eight
19 months;

20 (iii) Where the instant conviction is for a class B
21 felony and is preceded by exactly two qualified
22 felony convictions, but the conditions of



1 paragraph (b)(ii) do not apply--three years, four
2 months; and

3 (iv) Where the instant conviction is for a class C
4 felony offense enumerated above and is preceded
5 by exactly two qualified felony convictions, but
6 the conditions of paragraph (b)(iii) do not
7 apply--one year, eight months;

8 ~~[(b) Two prior]~~ (e) Murder in the second degree or a class
9 A, B, or C felony preceded by two qualified felony
10 convictions:

11 (i) Where the instant conviction is for murder in the
12 second degree or attempted murder in the second
13 degree and is preceded by exactly two qualified
14 felony convictions--~~[twenty]~~ forty years;

15 (ii) Where the instant conviction is for a class A
16 felony and is preceded by exactly two qualified
17 felony convictions, but the conditions of
18 paragraph (b)(i) do not apply--thirteen years,
19 four months;

20 (iii) Where the instant conviction is for a class B
21 felony and is preceded by exactly two qualified
22 felony convictions, but the conditions of



1 paragraph (b) (ii) do not apply--six years, eight
2 months; and

3 (iv) Where the instant conviction is for a class C
4 felony offense enumerated above and is preceded
5 by exactly two qualified felony convictions, but
6 the conditions of paragraph (b) (iii) do not
7 apply--three years, four months;

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

11 (i) Where the instant conviction is for murder in the
12 second degree or attempted murder in the second
13 degree and is preceded by exactly three or more
14 qualified felony convictions--~~[thirty]~~ forty
15 years;

16 (ii) Where the instant conviction is for a class A
17 felony and is preceded by three or more qualified
18 felony convictions, but the conditions of
19 paragraph (c) (i) do not apply--twenty years;

20 (iii) Where the instant conviction is for a class B
21 felony and is preceded by three or more qualified



1 felony convictions, but the conditions of
 2 paragraph (c)(ii) do not apply--ten years; and
 3 (iv) Where the instant conviction is for a class C
 4 felony offense enumerated above and is preceded
 5 by three or more qualified felony convictions,
 6 but the conditions of paragraph (c)(iii) do not
 7 apply--five years.

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

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

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

20 ~~(c) Within twenty years after a prior felony conviction~~
 21 ~~where the prior felony conviction was for a class A~~
 22 ~~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)]~~ (3) Notwithstanding any other law to the contrary,
2 any person convicted of any of the following misdemeanor
3 offenses:

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

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

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

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

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

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

16 and who has been convicted of any of the offenses enumerated
17 above on at least three prior and separate occasions within
18 three years of the date of the commission of the present
19 offense, shall be sentenced to no less than nine months of
20 imprisonment. Whenever a court sentences a defendant under this
21 subsection for an offense under section 707-733, the court shall
22 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)]~~ (4) The sentencing court may impose the above
4 sentences consecutive to any sentence imposed on the defendant
5 for a prior conviction, but such sentence shall be imposed
6 concurrent to the sentence imposed for the instant conviction.
7 The court may impose a lesser mandatory minimum period of
8 imprisonment without possibility of parole than that mandated by
9 this section where the court finds that strong mitigating
10 circumstances warrant such action. Strong mitigating
11 circumstances shall include, but shall not be limited to the
12 provisions of section 706-621. The court shall provide a
13 written opinion stating its reasons for imposing the lesser
14 sentence.

15 ~~[(6)]~~ (5) A person who is imprisoned in a correctional
16 institution pursuant to subsection (1) shall not be paroled
17 prior to the expiration of the mandatory minimum term of
18 imprisonment imposed pursuant to subsection (1).

19 ~~[(7)]~~ (6) For purposes of this section:

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



1 (b) A prior conviction in this or another jurisdiction
 2 shall be deemed a felony conviction if it was
 3 punishable by a sentence of death or of imprisonment
 4 in excess of one year; and

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

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

8 "**§706-606.6 Repeat violent and sexual offender; enhanced**
 9 **sentence.** (1) In this section:

10 (a) "Special", with reference to a felony means:

11 (i) An offense under section 707-701.5, 707-702, 707-
 12 710, 707-711, 707-720, 707-730, 707-731, 707-732,
 13 707-733.5, 707-750, 708-810, 708-820, or 708-840;

14 (ii) A class A felony under section 707-720 (unless
 15 reduced to a class B felony pursuant to section
 16 707-720(3)), 707-730, 707-733.5, 707-750, or 708-
 17 840;

18 (iii) A class B felony under section 707-702, 707-710,
 19 707-720 (if reduced from a class A felony to a
 20 class B felony pursuant to section 707-720(3)),
 21 707-731, 708-810, or 708-820; or



1 (iv) A class C felony under section 707-711 or
2 707-732.

3 (b) "Eligible," with reference to a conviction for a prior
4 special felony offense, means the conviction occurred
5 within:

6 (i) Twenty years before the date of the instant
7 offense, if the prior offense is under section
8 707-701.5 or is a special class A felony;

9 (ii) Ten years before the date of the instant offense,
10 if the prior offense is a special class B felony;
11 or

12 (iii) Five years before the date of the instant
13 offense, if the prior offense is a special class
14 C felony.

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



1 (2) Notwithstanding any other provision of law to the
2 contrary, any person who is convicted of [~~an offense under~~
3 ~~section 707-701.5, 707-702, 707-730, 707-731, 707-732, 707-~~
4 ~~733.6, 707-750, or 708-840, after having been convicted on] a
5 special felony offense and has at least three prior and separate
6 [~~occasions of an offense under section 707-701.5, 707-702, 707-~~
7 ~~710, 707-711, 707-730, 707-731, 707-732, 707-733.6, 707-750, or~~
8 ~~708-840, or of an offense] eligible convictions of:~~~~

9 (a) Special felonies; or

10 (b) Offenses under federal law or the laws of another
11 state that [~~is~~] are comparable to [~~an offense under~~
12 ~~section 707-701.5, 707-702, 707-710, 707-711, 707-730,~~
13 ~~707-731, 707-732, 707-733.6, 707-750, or 708-840,~~]
14 special felonies;

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

17 [~~(2)~~] ~~A conviction shall not be considered a prior offense~~
18 ~~unless the conviction occurred within the following time~~
19 ~~periods:~~

20 ~~(a)~~ ~~For an offense under section 707-701.5, 707-702,~~
21 ~~707-730, 707-733.6, 707-750, or 708-840, within the~~



1 ~~past twenty years from the date of the instant~~
2 ~~offense;~~

3 ~~(b) For an offense under section 707-710 or 707-731,~~
4 ~~within the past ten years from the date of the instant~~
5 ~~offense;~~

6 ~~(c) For an offense under section 707-711 or 707-732,~~
7 ~~within the past five years from the date of the~~
8 ~~instant offense; or~~

9 ~~(d) For an offense under federal law or the laws of~~
10 ~~another state that is comparable to an offense under~~
11 ~~section 707-701.5, 707-702, 707-710, 707-711, 707-730,~~
12 ~~707-731, 707-732, 707-733.6, 707-750, or 708-840,~~
13 ~~within the maximum term of imprisonment possible under~~
14 ~~the appropriate jurisdiction.]"~~

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

17 "**§706-661 Extended terms of imprisonment.** The court may
18 sentence a person who satisfies the criteria for any of the
19 categories set forth in section 706-662, or shall sentence a
20 person convicted of a special felony under section 706-606.6 to
21 an extended term of imprisonment, which shall have a maximum
22 length as follows:



- 1 (1) For murder in the second degree--life without the
- 2 possibility of parole;
- 3 (2) For a class A felony--indeterminate life term of
- 4 imprisonment;
- 5 (3) For a class B felony--indeterminate [~~twenty-year~~]
- 6 forty-year term of imprisonment; and
- 7 (4) For a class C felony--indeterminate [~~ten-year~~]
- 8 fifteen-year term of imprisonment.

9 When ordering an extended term sentence, the court shall impose
 10 the maximum length of imprisonment. The minimum length of
 11 imprisonment for an extended term sentence [~~under paragraphs~~
 12 ~~(2), (3), and (4)~~] pursuant to 706-622 shall be determined by
 13 the Hawaii paroling authority in accordance with section 706-
 14 669. The minimum length of imprisonment for an extended term
 15 sentence of a special felony conviction under section 706-606.6
 16 shall be as set forth in section 706-606.5."

17 SECTION 4. This Act does not affect rights and duties that
 18 matured, penalties that were incurred, and proceedings that were
 19 begun, before its effective date.

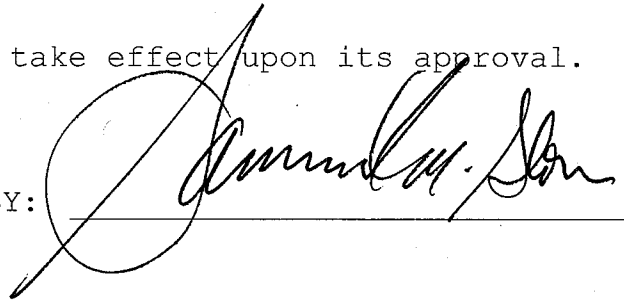
20 SECTION 5. Statutory material to be repealed is bracketed
 21 and stricken. New statutory material is underscored.



1 SECTION 6. This Act shall take effect upon its approval.

2

INTRODUCED BY:



Report Title:

Repeat Violent and Sexual Offenders; Minimum Penalties

Description:

Establishes stricter penalties for repeat violent and sexual offenders.

