

JAN 23 2009

A BILL FOR AN ACT

RELATING TO SENTENCING.

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

1 SECTION 1. The prison population in Hawaii has increased
2 exponentially with the enactment of mandatory sentences for drug
3 offenses. The results of a 2008 poll released by Families
4 Against Mandatory Minimums shows widespread support for ending
5 mandatory minimum sentences for nonviolent offenses.
6 Seventy-eight per cent of Americans or nearly eight Americans in
7 ten agree that courts, not Congress, should determine an
8 individual's prison sentence. Six in ten Americans or
9 fifty-nine per cent oppose mandatory minimum sentences for
10 nonviolent offenders. Fifty-seven per cent of Americans polled
11 would likely vote for a candidate for Congress who would
12 eliminate all mandatory minimum sentencing for nonviolent
13 crimes. Based upon the poll, Families Against Mandatory
14 Minimums concludes that mandatory minimum sentences have not
15 discouraged drug use, have not reduced drug trafficking, have
16 created soaring state and federal corrections costs, impose
17 substantial indirect costs on families by imprisoning spouses,



1 parents, and breadwinners for lengthy periods of time; are not
2 applied evenly, thus disproportionately impacting minorities and
3 resulting in vastly different sentences for equally blameworthy
4 offenders, and usurp judicial discretion.

5 The current sentencing system in Hawaii has an impact on
6 native Hawaiians and Pacific islanders, who are incarcerated at
7 a disproportionate rate to their percentage of the population.
8 Mandatory minimum sentences imposed upon nonviolent offenders
9 are helping to fuel the racial disparities in Hawaii's prison
10 population. Mandatory minimum sentences have also fueled a
11 dramatic increase in the incarceration of women.

12 The American Bar Association Justice Kennedy Commission, in
13 a 2003 Report to the House of Delegates, recommended, among
14 other things, that:

- 15 (1) Lengthy periods of incarceration should be reserved
16 for offenders who pose the greatest danger to the
17 community and who commit the most serious offenses;
- 18 (2) Alternatives to incarceration should be provided when
19 offenders pose minimum risk to the community and
20 appear likely to benefit from rehabilitation efforts;
21 and



1 (3) Mandatory minimum sentencing statutes should be
2 repealed.

3 The legislature believes that a better, more cost-effective
4 "alternative sentencing" approach would be to treat nonviolent
5 offenses in the same manner as other serious felonies, meaning
6 that sentences would be determined by a judge with access to the
7 offender's criminal record and knowledge of the circumstances
8 involved in the offense.

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

18 Alternative sentencing also reduces the cost of
19 corrections. Diverting individuals away from prison saves money
20 and in many cases provides a better solution for offenders and
21 society by providing the best methods for successfully
22 reintegrating offenders back into society.



1 The legislature finds that mandatory minimum sentencing for
2 the conviction of methamphetamine trafficking in the second
3 degree (distribution), a class B felony, does not serve any
4 rehabilitative purpose, which should be the purpose of
5 sentencing for any drug offense.

6 The purpose of this Act is to clarify the sentencing
7 provisions, including mandatory minimum terms, for the offense
8 of methamphetamine trafficking in the second degree.

9 SECTION 2. Section 712-1240.8, Hawaii Revised Statutes, is
10 amended to read as follows:

11 "~~§~~712-1240.8~~§~~ Methamphetamine trafficking in the
12 second degree. (1) A person commits the offense of
13 methamphetamine trafficking in the second degree if the person
14 knowingly distributes methamphetamine in any amount.

15 (2) Methamphetamine trafficking in the second degree is a
16 class B felony for which the defendant ~~shall~~ may be sentenced
17 as provided in subsection (3).

18 (3) Notwithstanding sections 706-620, 706-640, 706-641,
19 706-660, 706-669, and any other law to the contrary, a person
20 convicted of methamphetamine trafficking in the second degree
21 ~~shall~~ may be sentenced to an indeterminate term of
22 imprisonment of ten years with a mandatory minimum term of



1 imprisonment of not less than one year and not greater than
2 [~~four~~] three years and a fine not to exceed \$10,000,000;
3 provided that:

4 (a) If the person has one prior conviction for
5 methamphetamine trafficking pursuant to this section
6 or section 712-1240.7, the mandatory minimum term of
7 imprisonment shall be not less than [~~three~~] two
8 years [~~, four months~~] and not greater than [~~six years,~~
9 ~~eight months,~~] four years;

10 (b) If the person has two prior convictions for
11 methamphetamine trafficking pursuant to this section
12 or section 712-1240.7, the mandatory minimum term of
13 imprisonment shall be not less than [~~six years, eight~~
14 ~~months~~] four years and not greater than [~~ten~~] seven
15 years; or

16 (c) If the person has three or more prior convictions for
17 methamphetamine trafficking pursuant to this section
18 or section 712-1240.7, the mandatory minimum term of
19 imprisonment shall be [~~ten~~] eight years."

20 SECTION 3. This Act does not affect rights and duties that
21 matured, penalties that were incurred, and proceedings that were
22 begun, before its effective date.



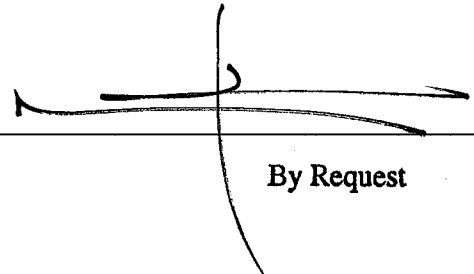
S.B. NO. 81

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

3 SECTION 5. This Act shall take effect on July 1, 2009.

4

INTRODUCED BY:

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By Request



Report Title:

Sentencing; Methamphetamine Trafficking in the Second Degree

Description:

Clarifies sentencing requirements for the offense of methamphetamine trafficking in the second degree.

