



EXECUTIVE CHAMBERS  
HONOLULU

NEIL ABERCROMBIE  
GOVERNOR

**GOV. MSG. NO. 1386**

July 8, 2013

The Honorable Donna Mercado Kim,  
President and Members  
of the Senate  
Twenty-Seventh State Legislature  
State Capitol, Room 409  
Honolulu, Hawaii 96813

The Honorable Joseph M. Souki,  
Speaker and Members of  
the House of Representatives  
Twenty-Seventh State Legislature  
State Capitol, Room 431  
Honolulu, Hawaii 96813

Dear President Kim, Speaker Souki, and Members of the Legislature:

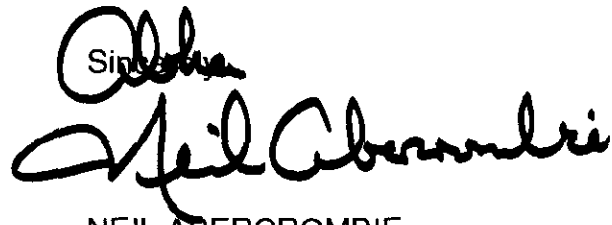
Re: Senate Bill No. 68, S.D. 1, H.D. 1

Senate Bill No. 68, S.D. 1, H.D. 1, entitled "A BILL FOR AN ACT RELATING TO SENTENCING" will become law without my signature, pursuant to Section 16 of Article III of the State Constitution.

The purpose of this bill is to provide discretion to judges in setting incarceration terms when sentencing drug offenders in certain Class C felony offenses.

I believe that judges should have discretion when they sentence convicted persons to imprisonment. However, as a result of the number of exclusions on page 5, lines 16-17, this bill only affects a small number of cases. I encourage the Legislature to consider additional offenses in which to provide judicial discretion.

For the foregoing reasons, Senate Bill No. 68, S.D. 1, H.D. 1 will become law as Act 280, Session Laws of Hawaii 2013, effective July 9, 2013, without my signature.

Sincerely,  


NEIL ABERCROMBIE  
Governor, State of Hawaii

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# A BILL FOR AN ACT

RELATING TO SENTENCING.

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

1           SECTION 1. The legislature finds that since the enactment  
2 of mandatory minimum sentencing for drug users, the Federal  
3 Bureau of Prisons budget increased from \$220,000,000 in 1986 to  
4 \$5,400,000,000 in 2008. From 2000 to 2009, appropriations for  
5 the Hawaii department of public safety increased ninety per  
6 cent, from \$128,000,000 to \$243,000,000. Mandatory minimum  
7 sentences are statutorily prescribed terms of imprisonment that  
8 automatically attach upon conviction of certain criminal  
9 conduct, usually pertaining to drug or firearm offenses. Absent  
10 very narrow criteria for relief, a sentencing judge is powerless  
11 to mandate a term of imprisonment below the mandatory minimum.  
12 Mandatory minimum sentences for drug offenses rely solely upon  
13 the weight of the substance as a proxy for the degree of  
14 involvement of a defendant's role. Nationwide, mandatory  
15 minimum sentences have consistently been shown to have a  
16 disproportionate impact on persons of color. The United States  
17 Sentencing Commission, in a fifteen-year overview of the federal  
18 sentencing system, concluded that "mandatory penalty statutes



1 are used inconsistently" and disproportionately affect African  
2 American and other defendants of color. As a result, drug  
3 defendants of color are twenty per cent more likely to be  
4 sentenced to prison than white drug defendants. The department  
5 of public safety reports that Native Hawaiians comprise thirty-  
6 nine to forty per cent of Hawaii's incarcerated population,  
7 while they represent only twenty-four per cent of the general  
8 population. According to the United States Department of  
9 Justice, the time spent in prison does not affect recidivism  
10 rates. Government surveys document that drug use is fairly  
11 consistent across racial and ethnic groups.

12 In the Anti-Drug Abuse Act of 1986, Congress structured  
13 anti-drug penalties to encourage the Department of Justice to  
14 concentrate its enforcement effort against high-level and major-  
15 level drug traffickers, and provided new, long mandatory minimum  
16 sentences for such offenders, correctly recognizing the federal  
17 role in the combined federal-state drug enforcement effort.  
18 Hawaii's criminal justice approach to drug use is a significant  
19 contributor to the total number of people admitted to prison or  
20 jail. For example, in 2009 approximately two thousand persons  
21 were arrested for drug offenses in Hawaii, with seven hundred  
22 twenty-six persons sentenced to incarceration. Of the seven



1 hundred twenty-six persons incarcerated, thirty-two per cent  
2 were Native Hawaiians. According to the 2004 State of Hawaii  
3 treatment needs assessment program dataset, Native Hawaiians do  
4 not use drugs at widely dissimilar rates to other races or  
5 ethnicities.

6 The legislature further finds that linking drug quantity  
7 with punishment severity has had a particularly profound impact  
8 on women, who are more likely to play peripheral roles in a drug  
9 enterprise than men. However, because prosecutors can attach  
10 drug quantities to an individual regardless of the level of  
11 culpability of a defendant's participation in the charged  
12 offense, women have been exposed to increasingly punitive  
13 sentences. In 2000, the department of public safety reported  
14 that more than fifty-six per cent of Hawaii's incarcerated women  
15 were sentenced to mandatory prison terms. Low-level and mid-  
16 level drug offenders can be adequately prosecuted by the states  
17 and punished or supervised in treatment programs, as  
18 appropriate. Research has shown that community-based drug  
19 treatment is more effective both in economic and social terms  
20 than incarceration. Studies have estimated savings from \$10 to  
21 \$18 for every \$1 spent on community-based treatment.



1 It is widely acknowledged that the decades-long war on  
2 drugs is a failure. Federal and state drug enforcement  
3 resources are not being properly focused against high-level  
4 traffickers. In May 2007, the United States Sentencing  
5 Commission issued a report to Congress, stating that "[t]he  
6 majority of federal cocaine offenders generally perform low-  
7 level functions." In discussing drug abuse, the Director of the  
8 National Institute on Drug Abuse has stated, "This aberrant  
9 behavior has traditionally been viewed as bad 'choices' that are  
10 made voluntarily by the addict. However, recent studies have  
11 shown that repeated drug use leads to long-lasting changes in  
12 the brain that undermine voluntary control."

13 The purpose of this Act is to grant sentencing courts the  
14 discretion to sentence a defendant convicted in a class B or  
15 class C felony drug case to a prison sentence of a length  
16 appropriate to the defendant's particular offense and underlying  
17 circumstances.

18 SECTION 2. Section 706-660, Hawaii Revised Statutes, is  
19 amended to read as follows:

20 **"§706-660 Sentence of imprisonment for class B and C**  
21 **felonies; ordinary terms[-]; discretionary terms. [A] (1)**  
22 **Except as provided in subsection (2), a person who has been**



1 convicted of a class B or class C felony may be sentenced to an  
2 indeterminate term of imprisonment except as provided for in  
3 section 706-660.1 relating to the use of firearms in certain  
4 felony offenses and section 706-606.5 relating to repeat  
5 offenders. When ordering such a sentence, the court shall  
6 impose the maximum length of imprisonment which shall be as  
7 follows:

8 ~~[(1)]~~ (a) For a class B felony-~~[10]~~ ten years; and

9 ~~[(2)]~~ (b) For a class C felony-~~[5]~~ five years.

10 The minimum length of imprisonment shall be determined by the  
11 Hawaii paroling authority in accordance with section 706-669.

12 (2) A person who has been convicted of a class B or class  
13 C felony for any offense under part IV of chapter 712 may be  
14 sentenced to an indeterminate term of imprisonment; provided  
15 that this subsection shall not apply to sentences imposed under  
16 sections 706-606.5, 706-660.1, 712-1240.5, 712-1240.8, 712-1242,  
17 712-1245, 712-1249.5, 712-1249.6, 712-1249.7, and 712-1257.

18 When ordering a sentence under this subsection, the court  
19 shall impose a term of imprisonment which shall be as follows:

20 (a) For a class B felony--ten years or less, but not less  
21 than five years; and



1        (b) For a class C felony--five years or less, but not less  
2                    than one year.

3        The minimum length of imprisonment shall be determined by the  
4        Hawaii paroling authority in accordance with section 706-669."

5                SECTION 3. This Act does not affect rights and duties that  
6 matured, penalties that were incurred, and proceedings that were  
7 begun before its effective date.

8                SECTION 4. Statutory material to be repealed is bracketed  
9 and stricken. New statutory material is underscored.

10               SECTION 5. This Act shall take effect on July 1, 2013.

APPROVED this                    day of                    , 2013

GOVERNOR OF THE STATE OF HAWAII