
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, African
3 American drug defendants of color are twenty per cent more
4 likely to be sentenced to prison than white drug defendants.
5 The department of public safety reports that Native Hawaiians
6 comprise thirty-nine to forty per cent of Hawaii's incarcerated
7 population, while they represent only twenty-four per cent of
8 the general population. According to the United States
9 Department of Justice, the time spent in prison does not affect
10 recidivism rates. Government surveys document that drug use is
11 fairly 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 to incarceration. In 2000, the department of public
14 safety reported that more than fifty-six per cent of Hawaii's
15 incarcerated women were sentenced to mandatory prison terms.
16 Low-level and mid-level drug offenders can be adequately
17 prosecuted by the states and punished or supervised in treatment
18 programs, as appropriate. Research has shown that community-
19 based drug treatment is more effective both in economic and
20 social terms than incarceration. Studies have estimated savings
21 from \$10 to \$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 an offender'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) For a class B felony--10 years; and
- 9 (2) For a class C felony--5 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 except as
15 provided in sections 706-606.5, 706-660.1, 712-1240.5,
16 712-1240.7, 712-1240.8, 712-1242, 712-1245, 712-1249.5,
17 712-1249.6, 712-1249.7, and 712-1257.

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

- 20 (1) For a class B felony--10 years or less; and
- 21 (2) For a class C felony--5 years or less.



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

3 SECTION 3. A defendant convicted for any offense under
4 part IV of chapter 712, Hawaii Revised Statutes, excluding any
5 defendant sentenced under sections 706-606.5, 706-660.1,
6 712-1240.5, 712-1240.7, 712-1240.8, 712-1242, 712-1245,
7 712-1249.5, 712-1249.6, 712-1249.7, and 712-1257, Hawaii Revised
8 Statutes, has the right to a one-time review of the length of
9 the original prison sentence. The defendant may petition the
10 original sentencing court for a review of the original sentence
11 for a possible sentence reduction under this Act. The original
12 sentencing court's review of a defendant's original sentence
13 shall consider whether the original sentence term is
14 proportionate to the offense and underlying circumstances under
15 the terms of this Act. The court's decision shall be final and
16 there shall be no review of the court's decision. A petition
17 for review under this section shall be filed before July 1,
18 2015.

19 SECTION 4. Except as provided in section 3, this Act does
20 not affect rights and duties that matured, penalties that were
21 incurred, and proceedings that were begun before its effective
22 date.



1 SECTION 5. Statutory material to be repealed is bracketed
2 and stricken. New statutory material is underscored.

3 SECTION 6. This Act shall take effect on July 1, 2013.

4



Report Title:

Sentencing; Drug Offenses; Mandatory Minimums

Description:

Allows judges discretion in setting incarceration terms when sentencing drug offenders in certain class B and class C felony cases to make the length of the sentence proportionate to the offense and related conduct. Excludes certain offenses. (SD1)

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