

JAN 18 2013

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 there have been a
2 number of cases in which public employees have abused their
3 public positions to commit crimes thereby breaching public
4 trust. However, the defendants in these cases served little or
5 no time at all for the felonies or misdemeanors they were
6 convicted of committing.

7 The legislature further finds that greater consideration
8 should be exercised during sentencing when a public employee
9 abuses a position in order to commit a felony or misdemeanor.
10 In such instances, the public employee takes advantages of the
11 powers and duties the public employee is granted for personal
12 gain. This abuse breaches the government's trust and, more
13 importantly, the public's trust in government.

14 The purpose of this Act is to:

15 (1) Establish additional factors for the court to consider
16 when sentencing a defendant who abused a position as a
17 public employee to commit a felony or misdemeanor;



- 1 (2) Allow the court to impose additional or enhanced
- 2 penalties during sentencing under certain
- 3 circumstances; and
- 4 (3) Make a defendant ineligible for deferred acceptance of
- 5 guilty plea or nolo contendere plea if the defendant
- 6 abused the defendant's position as a public employee
- 7 to commit a felony or misdemeanor.

8 SECTION 2. Chapter 706, Hawaii Revised Statutes, is
9 amended by adding a new section to be appropriately designated
10 and to read as follows:

11 "§706- Sentencing considerations for felonies or
12 misdemeanors committed by a public employee; enhanced penalties.

13 (1) If the court determines that the defendant abused the
14 defendant's position as a public employee to commit a felony or
15 misdemeanor, the court shall consider the following factors, in
16 addition to the factors considered under section 706-606, in
17 determining the sentence to be imposed:

- 18 (a) The nature and circumstances of the defendant using
19 the defendant's position as a public employee to
20 commit a felony or misdemeanor;
- 21 (b) Any monetary loss, if applicable; and



1 (c) Any real or personal property loss or damage, if
2 applicable.

3 (2) The court may impose additional or enhanced penalties
4 if the court deems necessary; provided that the defendant is
5 convicted of any offense that constitutes a felony or
6 misdemeanor and is not eligible for a deferred acceptance of
7 guilty plea or nolo contendere plea pursuant to section 853-
8 4(16).

9 (3) As used in this section, "public employee" means any
10 public employee of the State or any county, and the political
11 subdivisions and agencies thereof, any employees under contract
12 with the State or county, any civil service employees, and any
13 probationary or provisional employees of the State or county."

14 SECTION 3. Section 853-4, Hawaii Revised Statutes, is
15 amended to read as follows:

16 "**§853-4 Chapter not applicable; when.** This chapter shall
17 not apply when:

18 (1) The offense charged involves the intentional, knowing,
19 reckless, or negligent killing of another person;

20 (2) The offense charged is:

21 (A) A felony that involves the intentional, knowing,
22 or reckless bodily injury, substantial bodily



- 1 injury, or serious bodily injury of another
2 person; or
- 3 (B) A misdemeanor or petty misdemeanor that carries a
4 mandatory minimum sentence and that involves the
5 intentional, knowing, or reckless bodily injury,
6 substantial bodily injury, or serious bodily
7 injury of another person;
- 8 (3) The offense charged involves a conspiracy or
9 solicitation to intentionally, knowingly, or
10 recklessly kill another person or to cause serious
11 bodily injury to another person;
- 12 (4) The offense charged is a class A felony;
- 13 (5) The offense charged is nonprobationable;
- 14 (6) The defendant has been convicted of any offense
15 defined as a felony by the Hawaii Penal Code or has
16 been convicted for any conduct that if perpetrated in
17 this State would be punishable as a felony;
- 18 (7) The defendant is found to be a law violator or
19 delinquent child for the commission of any offense
20 defined as a felony by the Hawaii Penal Code or for
21 any conduct that if perpetrated in this State would
22 constitute a felony;



- 1 (8) The defendant has a prior conviction for a felony
- 2 committed in any state, federal, or foreign
- 3 jurisdiction;
- 4 (9) A firearm was used in the commission of the offense
- 5 charged;
- 6 (10) The defendant is charged with the distribution of a
- 7 dangerous, harmful, or detrimental drug to a minor;
- 8 (11) The defendant has been charged with a felony offense
- 9 and has been previously granted deferred acceptance of
- 10 guilty plea status for a prior offense, regardless of
- 11 whether the period of deferral has already expired;
- 12 (12) The defendant has been charged with a misdemeanor
- 13 offense and has been previously granted deferred
- 14 acceptance of guilty plea status for a prior felony,
- 15 misdemeanor, or petty misdemeanor for which the period
- 16 of deferral has not yet expired;
- 17 (13) The offense charged is:
- 18 (A) Escape in the first degree;
- 19 (B) Escape in the second degree;
- 20 (C) Promoting prison contraband in the first degree;
- 21 (D) Promoting prison contraband in the second degree;
- 22 (E) Bail jumping in the first degree;

- 1 (F) Bail jumping in the second degree;
- 2 (G) Bribery;
- 3 (H) Bribery of or by a witness;
- 4 (I) Intimidating a witness;
- 5 (J) Bribery of or by a juror;
- 6 (K) Intimidating a juror;
- 7 (L) Jury tampering;
- 8 (M) Promoting prostitution in the first degree;
- 9 (N) Promoting prostitution in the second degree;
- 10 (O) Abuse of family or household members;
- 11 (P) Sexual assault in the second degree;
- 12 (Q) Sexual assault in the third degree;
- 13 (R) A violation of an order issued pursuant to
- 14 chapter 586;
- 15 (S) Promoting child abuse in the second degree;
- 16 (T) Promoting child abuse in the third degree;
- 17 (U) Electronic enticement of a child in the first
- 18 degree; or
- 19 (V) Electronic enticement of a child in the second
- 20 degree;
- 21 (14) The defendant has been charged with:



1 (A) Knowingly or intentionally falsifying any report
 2 required under chapter 11, part XIII with the
 3 intent to circumvent the law or deceive the
 4 campaign spending commission; or

5 (B) Violating section 11-352 or 11-353; [~~or~~]

6 (15) The defendant holds a commercial driver's license and
 7 has been charged with violating a traffic control law,
 8 other than a parking law, in connection with the
 9 operation of any type of motor vehicle[-]; or

10 (16) The defendant has been charged with a felony or
 11 misdemeanor committed through abuse of the defendant's
 12 position as a public employee.

13 The court may adopt by rule other criteria in this area."

14 SECTION 4. This Act does not affect rights and duties that
 15 matured, penalties that were incurred, and proceedings that were
 16 begun before its effective date.

17 SECTION 5. Statutory material to be repealed is bracketed
 18 and stricken. New statutory material is underscored.

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

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Will Syro

INTRODUCED BY:

Heather J. ...
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Report Title:

Sentencing; Public Employees

Description:

Establishes additional factors for the court to consider when sentencing a defendant who abused the defendant's position as a public employee to commit a felony or misdemeanor and allows the court to impose additional or enhanced penalties. Makes a defendant ineligible for deferred acceptance of guilty plea or nolo contendere plea if the defendant abused the defendant's position as a public employee to commit a felony or misdemeanor.

The summary description of legislation appearing on this page is for informational purposes only and is not legislation or evidence of legislative intent.

