
A BILL FOR AN ACT

RELATING TO CRIMINAL JUSTICE.

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

1 PART I

2 The legislature finds that Hawaii's criminal justice system
3 is overwhelmed and overcrowded at every point. Hawaii's court
4 system, public defenders, and correctional institutions are all
5 operating over the capacity for which they were designed.
6 Further, the legislature finds that the burdens of this
7 overcrowding fall disproportionately on Hawaii's most socially
8 disempowered populations. Numerous studies and reports have
9 shown that native Hawaiians are overrepresented in the criminal
10 justice and corrections systems.

11 The purpose of this Act is to make Hawaii's criminal
12 justice system more equitable and efficient by introducing
13 compassion back into the justice system and implementing
14 policies that enable people to get the help they need for
15 rehabilitation and reintegration into society.



1 PART II

2 SECTION 2. The purpose of this part is to repeal mandatory
3 minimum sentences for drug offenses.

4 SECTION 3. Section 706-606.5, Hawaii Revised Statutes, is
5 amended to read as follows:

6 "§706-606.5 Sentencing of repeat offenders. (1)

7 Notwithstanding section 706-669 and any other law to the
8 contrary, any person convicted of murder in the second degree,
9 any class A felony[7] or any class B felony[7] other than a
10 class A or class B felony under part IV or chapter 712, or any
11 of the following class C felonies: section 134-7 relating to
12 persons prohibited from owning, possessing, or controlling
13 firearms or ammunition; section 134-8 relating to ownership,
14 etc., of certain prohibited weapons; section 134-17 only as it
15 relates to providing false information or evidence to obtain a
16 permit under section 134-9; section 188-23 relating to
17 possession or use of explosives, electrofishing devices, and
18 poisonous substances in state waters; section 386-98(d)(1)
19 relating to fraud violations and penalties; section 431:2-
20 403(b)(2) relating to insurance fraud; section 707-703 relating
21 to negligent homicide in the second degree; section 707-711



1 relating to assault in the second degree; section 707-713
2 relating to reckless endangering in the first degree; section
3 707-716 relating to terroristic threatening in the first degree;
4 section 707-721 relating to unlawful imprisonment in the first
5 degree; section 707-732 relating to sexual assault in the third
6 degree; section 707-752 relating to promoting child abuse in the
7 third degree; section 707-757 relating to electronic enticement
8 of a child in the second degree; section 707-766 relating to
9 extortion in the second degree; section 708-811 relating to
10 burglary in the second degree; section 708-821 relating to
11 criminal property damage in the second degree; section 708-831
12 relating to theft in the second degree; section 708-835.5
13 relating to theft of livestock; section 708-836 relating to
14 unauthorized control of propelled vehicle; section 708-839.55
15 relating to unauthorized possession of confidential personal
16 information; section 708-839.8 relating to identity theft in the
17 third degree; section 708-852 relating to forgery in the second
18 degree; section 708-854 relating to criminal possession of a
19 forgery device; section 708-875 relating to trademark
20 counterfeiting; section 710-1071 relating to intimidating a
21 witness; section 711-1103 relating to riot; section 712-1221



1 relating to promoting gambling in the first degree; section 712-
2 1224 relating to possession of gambling records in the first
3 degree; [~~section 712-1243 relating to promoting a dangerous drug~~
4 ~~in the third degree; section 712-1247 relating to promoting a~~
5 ~~detrimental drug in the first degree;~~] section 846E-9 relating
6 to failure to comply with covered offender registration
7 requirements, or who is convicted of attempting to commit murder
8 in the second degree, any class A felony[7] or any class B
9 felony[7] other than a class A or class B felony under part IV
10 or chapter 712, or any of the class C felony offenses enumerated
11 above and who has a prior conviction or prior convictions for
12 the following felonies, including an attempt to commit the same:
13 murder, murder in the first or second degree, a class A felony,
14 a class B felony, any of the class C felony offenses enumerated
15 above, or any felony conviction of another jurisdiction, shall
16 be sentenced to a mandatory minimum period of imprisonment
17 without possibility of parole during such period as follows:

18 (a) One prior felony conviction:

19 (i) Where the instant conviction is for murder in the
20 second degree or attempted murder in the second
21 degree—ten years;



- 1 (ii) Where the instant conviction is for a class A
- 2 felony—six years, eight months;
- 3 (iii) Where the instant conviction is for a class B
- 4 felony—three years, four months; and
- 5 (iv) Where the instant conviction is for a class C
- 6 felony offense enumerated above—one year, eight
- 7 months;
- 8 (b) Two prior felony convictions:
- 9 (i) Where the instant conviction is for murder in the
- 10 second degree or attempted murder in the second
- 11 degree—twenty years;
- 12 (ii) Where the instant conviction is for a class A
- 13 felony—thirteen years, four months;
- 14 (iii) Where the instant conviction is for a class B
- 15 felony—six years, eight months; and
- 16 (iv) Where the instant conviction is for a class C
- 17 felony offense enumerated above—three years,
- 18 four months;
- 19 (c) Three or more prior felony convictions:



- 1 (i) Where the instant conviction is for murder in the
2 second degree or attempted murder in the second
3 degree—thirty years;
- 4 (ii) Where the instant conviction is for a class A
5 felony—twenty years;
- 6 (iii) Where the instant conviction is for a class B
7 felony—ten years; and
- 8 (iv) Where the instant conviction is for a class C
9 felony offense enumerated above—five years."

10 SECTION 4. Section 712-1240.5, Hawaii Revised Statutes, is
11 amended to read as follows:

12 " ~~[+] §712-1240.5 [+]~~ **Manufacturing a controlled substance**
13 **with a child present.** (1) Except as provided in subsection
14 (2), any person convicted of manufacturing a controlled
15 substance in violation of this chapter, who commits the offense
16 knowing that a child under the age of sixteen is present in the
17 structure where the offense occurs, shall be sentenced to [a
18 ~~term of two years imprisonment to run consecutively to~~] the
19 maximum indeterminate term of imprisonment for the conviction of
20 any offense involving the manufacturing of a controlled
21 substance.



1 (2) Any person convicted of manufacturing a controlled
2 substance in violation of this chapter, who commits the offense
3 knowing that a child under the age of eighteen is present in the
4 structure where the offense occurs and causes the child to
5 suffer serious or substantial bodily injury as defined in
6 section 707-700, shall be sentenced to [~~a term of five years~~
7 ~~imprisonment to run consecutively to~~] the maximum indeterminate
8 term of imprisonment for the conviction of any offense involving
9 the manufacturing of a controlled substance.

10 (3) As used in this section, "structure" means any house,
11 apartment building, shop, warehouse, building, vessel, cargo
12 container, motor vehicle, tent, recreational vehicle, trailer,
13 or other enclosed space capable of holding a child and equipment
14 for the manufacture of a controlled substance."

15 SECTION 5. Section 712-1240.7, Hawaii Revised Statutes, is
16 amended by amending subsection (3) to read as follows:

17 "(3) Notwithstanding sections 706-620(2), 706-640, 706-
18 641, 706-659, 706-669, and any other law to the contrary, a
19 person convicted of methamphetamine trafficking in the first
20 degree shall be sentenced to an indeterminate term of
21 imprisonment of twenty years [~~with a mandatory minimum term of~~



1 ~~imprisonment of not less than two years and not greater than~~
2 ~~eight years]~~ and a fine not to exceed \$20,000,000 [~~;~~ provided
3 ~~that:~~

4 ~~(a) If the person has one prior conviction for~~
5 ~~methamphetamine trafficking pursuant to this section~~
6 ~~or section 712-1240.8, the mandatory minimum term of~~
7 ~~imprisonment shall be not less than six years, eight~~
8 ~~months and not greater than thirteen years, four~~
9 ~~months;~~

10 ~~(b) If the person has two prior convictions for~~
11 ~~methamphetamine trafficking pursuant to this section~~
12 ~~or section 712-1240.8, the mandatory minimum term of~~
13 ~~imprisonment shall be not less than thirteen years,~~
14 ~~four months and not greater than twenty years; or~~

15 ~~(c) If the person has three or more prior convictions for~~
16 ~~methamphetamine trafficking pursuant to this section~~
17 ~~or section 712-1240.8, the mandatory minimum term of~~
18 ~~imprisonment shall be twenty years]."~~

19 SECTION 6. Section 712-1240.8, Hawaii Revised Statutes, is
20 amended by amending subsection (3) to read as follows:



1 "(3) Notwithstanding sections 706-620, 706-640, 706-641,
2 706-660, 706-669, and any other law to the contrary, a person
3 convicted of methamphetamine trafficking in the second degree
4 shall be sentenced to an indeterminate term of imprisonment of
5 ten years [~~with a mandatory minimum term of imprisonment of not~~
6 ~~less than one year and not greater than four years]~~ and a fine
7 not to exceed \$10,000,000 [~~;~~ ~~provided that:~~

8 ~~(a) If the person has one prior conviction for~~
9 ~~methamphetamine trafficking pursuant to this section~~
10 ~~or section 712-1240.7, the mandatory minimum term of~~
11 ~~imprisonment shall be not less than three years, four~~
12 ~~months and not greater than six years, eight months,~~

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

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



1 SECTION 7. Section 712-1249.6, Hawaii Revised Statutes, is
2 amended to read as follows:

3 "§712-1249.6 Promoting a controlled substance in, on, or
4 near schools, school vehicles, public parks, or public housing
5 projects or complexes. (1) A person commits the offense of
6 promoting a controlled substance in, on, or near schools, school
7 vehicles, public parks, or public housing projects or complexes
8 if the person knowingly:

9 (a) Distributes or possesses with intent to distribute a
10 controlled substance in any amount in or on the real
11 property comprising a school, public park, or public
12 housing project or complex;

13 (b) Distributes or possesses with intent to distribute a
14 controlled substance in any amount within seven
15 hundred and fifty feet of the real property comprising
16 a school, public park, or public housing project or
17 complex;

18 (c) Distributes or possesses with intent to distribute a
19 controlled substance in any amount while on any school
20 vehicle, or within ten feet of a parked school vehicle



1 during the time that the vehicle is in service for or
2 waiting to transport school children; or

3 (d) Manufactures methamphetamine or any of its salts,
4 isomers, and salts of isomers, within seven hundred
5 and fifty feet of the real property comprising a
6 school, public park, or public housing project or
7 complex.

8 (2) A person who violates subsection (1) (a), (b), or (c)
9 is guilty of a class C felony. A person who violates subsection
10 (1) (d) is guilty of a class A felony.

11 ~~[(3) Any person with prior conviction or convictions under~~
12 ~~subsection (1) (a), (b), or (c) is punishable by a term of~~
13 ~~imprisonment of not less than two years and not more than ten~~
14 ~~years.~~

15 ~~(4) Any individual convicted under subsection (3) of this~~
16 ~~section shall not be eligible for parole until the individual~~
17 ~~has served the minimum sentence required by such subsection.~~

18 (5)] (3) For the purposes of this section, "school
19 vehicle" means every school vehicle as defined in section 286-
20 181 and any regulations adopted pursuant to that section.



1 defenders shall be qualified to practice before the supreme
2 court of this State. Assistant state public defenders shall be
3 appointed without regard to chapter 76 and shall serve at the
4 pleasure of the state public defender. All other employees may
5 be appointed in accordance with chapter 76. An assistant state
6 public defender may be employed on a part-time basis, and when
7 so employed, the assistant public defender may engage in the
8 general practice of law, other than in the practice of criminal
9 law.

10 (b) Subject to the approval of the defender council, the
11 state public defender shall employ at least one mental health
12 specialist on a permanent, full-time basis. The mental health
13 specialist shall be qualified by training, education, and
14 experience to identify persons served by the office who are
15 affected by mental illness, evaluate any special needs that such
16 persons may have in relation to their participation in the
17 criminal justice system, provide for those needs either through
18 direct services or referrals, and conduct training for assistant
19 state public defenders and other employees on identifying,
20 assessing the needs of, and effectively advocating for persons
21 with mental illness within the criminal justice system."



1 SECTION 10. There is appropriated out of the general
2 revenues of the State of Hawaii the sum of \$ or so much
3 thereof as may be necessary for fiscal year 2016-2017 for one
4 full time (1.0 FTE) mental health specialist position in the
5 office of the public defender.

6 The sum appropriated shall be expended by the office of the
7 public defender for the purposes of this Act.

8 PART IV

9 SECTION 11. The legislature finds that one of the
10 principal objectives of both contemporary sentencing theory and
11 current judicial practice is the imposition of sentences that
12 are proportionate to the offense committed and likely to improve
13 long-term, community-wide public safety. In cases involving
14 extremely violent and serious crimes or habitual offenders,
15 incarceration may be the only response that is both
16 proportionate and guarantees public safety, at least for the
17 period in which the offender is removed from the larger society.
18 However, in cases involving less-serious crime or offenders who
19 have not demonstrated resistance to rehabilitation, appropriate
20 sentences often need not take the form of imprisonment or long-
21 term incarceration. In fact, the ultimate goal of improved



1 community safety is often best served by evidence-based
2 sentencing policies and programs that focus on rehabilitation
3 and community reintegration.

4 The legislature finds that long-term incarceration in the
5 State's correctional facilities should be reserved for those
6 offenders convicted of extremely violent or serious crimes or
7 who demonstrate little interest in or capacity for
8 rehabilitation. In other cases, however, appropriate punishment
9 need not solely take the form of incarceration but can and
10 should take the form of some other intermediate sanction less
11 severe than incarceration but more severe than standard
12 probation. In these cases, intermediate sanctions that have
13 been shown to reduce the risk of future recidivism, adequately
14 protect the public safety, and control short and medium term
15 risks to the community must be available to the courts. If
16 appropriate, evidence-based sentencing alternatives are not
17 available, courts have little choice but to ignore risk
18 reduction consequences and resort to imprisonment or long-term
19 incarceration in many felony cases.

20 The purpose of this part is to authorize and fund evidence-
21 based sentencing alternatives that include appropriate



1 intermediate sanctions and other offender control mechanisms
2 designed to address the criminogenic needs of felony offenders
3 to reduce the risk of recidivism, emphasize long-term community
4 safety, and concentrate space in state correctional facilities
5 on violent and career offenders.

6 SECTION 12. Section 706-602, Hawaii Revised Statutes, is
7 amended by amending subsection (1) to read as follows:

8 "(1) The pre-sentence diagnosis and report shall be made
9 by personnel assigned to the court or other agency designated by
10 the court and shall include:

- 11 (a) An analysis of the circumstances attending the
12 commission of the crime;
- 13 (b) The defendant's history of delinquency or criminality,
14 physical and mental condition, family situation and
15 background, economic status and capacity to make
16 restitution or to make reparation to the victim or
17 victims of the defendant's crimes for loss or damage
18 caused thereby, education, occupation, and personal
19 habits;
- 20 (c) Information made available by the victim or other
21 source concerning the effect that the crime committed



1 by the defendant has had upon said victim, including
2 but not limited to, any physical or psychological harm
3 or financial loss suffered;

4 (d) Information concerning defendant's compliance or non-
5 compliance with any order issued under section 806-11;
6 [~~and~~]

7 (e) A needs and risk assessment based on the best
8 available research that identifies the relative risk
9 that the defendant poses to public safety through
10 future criminal conduct, the defendant's needs that
11 must be met to facilitate rehabilitation and community
12 reintegration, and recommendations for appropriate
13 evidence-based sentencing alternatives or
14 rehabilitative programs to be offered in a
15 correctional facility or in the community; and

16 [~~e~~] (f) Any other matters that the reporting person or
17 agency deems relevant or the court directs to be
18 included."

19 SECTION 13. Section 706-605, Hawaii Revised Statutes, is
20 amended by amending subsection (1) to read as follows:



1 "(1) Except as provided in parts II and IV or in section
2 706-647 and subsections (2), (6), and (7), and subject to the
3 applicable provisions of this Code, the court may sentence a
4 convicted defendant to one or more of the following
5 dispositions:

6 (a) To be placed on probation as authorized by part II;

7 (b) To pay a fine as authorized by part III and section
8 706-624;

9 (c) To be imprisoned for a term as authorized by part IV;
10 ~~[e]~~

11 (d) To perform services for the community under the
12 supervision of a governmental agency or benevolent or
13 charitable organization or other community service
14 group or appropriate supervisor; provided that the
15 convicted person who performs such services shall not
16 be deemed to be an employee of the governmental agency
17 or assigned work site for any purpose. All persons
18 sentenced to perform community service shall be
19 screened and assessed for appropriate placement by a
20 governmental agency coordinating public service work
21 placement as a condition of sentence ~~[or]~~ or



1 (e) To participate in an evidence-based sentencing
2 alternative adopted by the court pursuant to the
3 recommendation of the judicial council."

4 SECTION 14. Section 706-606, Hawaii Revised Statutes, is
5 amended to read as follows:

6 "§706-606 Factors to be considered in imposing a sentence.
7 The court, in determining the particular sentence to be imposed,
8 shall consider:

9 (1) The nature and circumstances of the offense and the
10 history and characteristics of the defendant;

11 (2) The need for the sentence imposed:

12 (a) To reflect the seriousness of the offense, to
13 promote respect for law, and to provide just
14 punishment for the offense;

15 (b) To afford adequate deterrence to criminal
16 conduct;

17 (c) To protect the public from further crimes of the
18 defendant; and

19 (d) To provide the defendant with needed educational
20 or vocational training, medical care, or other



1 correctional treatment in the most effective
2 manner;

3 (3) The kinds of sentences available; [~~and~~]

4 (4) The need to avoid unwarranted sentence disparities
5 among defendants with similar records who have been
6 found guilty of similar conduct [-]; and

7 (5) The reservation of space and resources within the
8 State's correctional facilities for violent and repeat
9 offenders."

10 SECTION 15. The judicial council shall make
11 recommendations to the chief justice for instruments or
12 processes, based on the best available research, to:

13 (1) Assess the needs of offenders that must be met to
14 facilitate their rehabilitation and to assist the
15 courts in judging the amenability of individual
16 offenders to rehabilitative programs in confinement or
17 in the community; and

18 (2) Estimate the relative risk that individual offenders
19 pose to public safety through future criminal conduct.

20 The judicial council shall study the feasibility of
21 identifying, through risk assessment instruments or processes,



1 those felony offenders who present an unusually low risk to
2 public safety and for whom the sentencing court shall have
3 discretion to impose an evidence-based sentencing alternative
4 rather than a term of incarceration or to impose a shorter term
5 of incarceration conditioned upon completion of a rehabilitative
6 program, either in confinement or in the community.

7 The judicial council shall make recommendations to the
8 chief justice on the adoption by the judiciary of evidence-based
9 sentencing alternatives and of rehabilitative programs to be
10 offered in confinement and in the community.

11 PART V

12 SECTION 16. The legislature finds that costs associated
13 with corrections and services to offenders are some of the
14 State's largest expenditures. The legislature also finds that
15 reforms to corrections and offender services and reallocation of
16 current expenditures in these areas have the potential to be
17 important engines of cost savings for the State. Transparency
18 with regard to the fiscal impact of corrections-related
19 legislation is critical for sound decisionmaking on corrections
20 policy. Fiscal transparency will empower the legislature, and
21 the people of Hawaii, to ensure that corrections policy reflects



1 prudent investment in effective initiatives that benefit the
2 State's long term interest.

3 The purpose of this part is to require that every measure
4 concerning corrections or criminal sentencing policy that is
5 introduced for consideration by the legislature shall include a
6 fiscal impact statement.

7 SECTION 17. Chapter 21, Hawaii Revised Statutes, is
8 amended by adding a new section to be appropriately designated
9 and to read as follows:

10 "§21- Fiscal impact statement; corrections and
11 sentencing. (a) No measure that concerns sentencing of
12 criminal defendants, the operation of any correctional facility,
13 or any matter of statewide corrections policy shall be referred
14 for a vote by either house of the legislature or by any standing
15 committee of either house of the legislature unless the measure
16 contains a fiscal impact statement in accordance with
17 requirements for fiscal impact statements contained in the rules
18 of the relevant house of the legislature.

19 (b) The legislative reference bureau shall prepare fiscal
20 impact statements for all measures subject to this section."




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PART VI

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

SECTION 19. This Act shall take effect on July 1, 2016.

INTRODUCED BY:



Kal Rhoach
Gerrit Takayon

JAN 27 2016



H.B. NO. 2134

Report Title:

Criminal Justice; Incarceration; Sentencing

Description:

Repeals mandatory minimum sentences for drug offenses. Establishes a mental health specialist position in the Office of the Public Defender. Authorizes evidence-based sentencing alternatives to incarceration. Requires fiscal impact statement for legislation relating to sentencing and corrections.

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

