

JAN 26 2022

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**A BILL FOR AN ACT**

RELATING TO CREDIT FOR TIME OF DETENTION PRIOR TO SENTENCE.

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

1           SECTION 1. The legislature, by Act 50, Session Laws of  
2 Hawaii 2012, enacted subsection (3) of section 706-671, Hawaii  
3 Revised Statutes, to prevent a defendant from earning credit for  
4 time served for a subsequent crime while the defendant is  
5 serving a sentence of imprisonment for a separate, unrelated  
6 offense.

7           In State v. Abihai, 146 Hawai'i 398, 463 P.3d 1055 (2020),  
8 however, the Hawaii Supreme Court held that section 706-671(3)  
9 did not prevent the defendant from receiving that credit for  
10 time served. In that case the defendant committed escape in the  
11 second degree while serving a term of imprisonment for a prior  
12 offense. Once apprehended, the defendant was returned to  
13 custody to continue serving his term of imprisonment and bail  
14 was set on his escape case. Although the intent behind section  
15 706-671(3) is to deny such a defendant credit for the time  
16 served for a subsequent offense while serving a term of  
17 imprisonment for a prior offense, the court held that under the

1 plain language of section 706-671(3), the defendant was still  
2 entitled to credit pursuant to section 706-671(1).

3 The purpose of this Act is to clarify that a defendant,  
4 being sentenced for an offense that was committed while serving  
5 a sentence of imprisonment on a separate unrelated felony  
6 conviction, cannot be given credit for a period of presentence  
7 detention that took place while the defendant was also serving  
8 the sentence of imprisonment for the separate unrelated felony  
9 conviction.

10 SECTION 2. Section 706-671, Hawaii Revised Statutes, is  
11 amended by amending subsection (3) to read as follows:

12 "(3) Notwithstanding subsection (1) and any other law to  
13 the contrary, when a defendant is [~~convicted~~] sentenced for a  
14 crime committed while serving a sentence of imprisonment on a  
15 separate unrelated felony conviction, [~~credit for time being~~  
16 ~~served for the term of imprisonment imposed on the defendant for~~  
17 ~~the separate unrelated felony conviction shall not be deducted~~  
18 ~~from the term of imprisonment imposed on the defendant for the~~  
19 ~~subsequent conviction.] and the defendant was detained in any  
20 state or local correctional or other institution following the  
21 defendant's arrest for the crime for which a sentence is  
22 imposed, any periods of detention following the defendant's  
23 arrest that took place while the defendant was also serving a~~

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1 sentence of imprisonment for the separate unrelated felony  
2 conviction shall not be deducted from the minimum and maximum  
3 terms of the sentence imposed on the later crime."

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

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

9 SECTION 5. This Act shall take effect upon its approval.

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INTRODUCED BY:   
BY REQUEST

**Report Title:**

Penal Code; Sentencing; Credit for Time of Detention Prior to Sentence

**Description:**

Clarifies that defendants may not earn credit on a sentence imposed for a subsequent conviction for time being served on a previous felony conviction.

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

JUSTIFICATION SHEET

DEPARTMENT: ATTORNEY GENERAL

TITLE: A BILL FOR AN ACT RELATING TO CREDIT FOR TIME OF DETENTION PRIOR TO SENTENCE

PURPOSE: To clarify that defendants who are convicted of crimes committed while serving a term of imprisonment cannot receive credit for any presentence time served for the new offense that overlaps with time being served for the old offense.

MEANS: Amend section 706-671(3), Hawaii Revised Statutes (HRS).

JUSTIFICATION: The Legislature intended "that a defendant will not earn credit for time served for a subsequent crime while the defendant is serving an imprisonment sentence for a separate, unrelated offense" when it added section 706-671(3), HRS, in 2012. See Senate Standing Committee Report No. 3188, Regular Session 2012. But in State v. Abihai, 146 Hawai'i 398, 463 P.3d 1055 (2020), the Hawaii Supreme Court found that the plain language of section 706-671(3), which would have denied the defendant's entitlement to presentence credit, does not eliminate the defendant's entitlement to presentence detention credit pursuant to section 706-671(1). The result was that the defendant was given credit for the time that he had been detained pretrial, even though he was still serving a sentence of imprisonment for a separate unrelated felony offense.

This bill will clarify the wording in section 706-671(3) to conform to the legislative intent and ensure that a defendant will not receive presentence detention credit for a subsequent crime while serving a sentence for a prior separate unrelated offense.

Impact on the public: The public will benefit because the amendment will promote the legislative intent that was expressed when section 706-671(3) was first enacted. Enactment of this clarification of section 706-671(3) will serve to deter convicted criminals from committing crimes while incarcerated and ensure that the sentences of imprisonment for any such crimes committed will not be subsumed within or diminished by the sentences of imprisonment the defendants were already serving.

Impact on the department and other agencies:

State v. Abihai, 146 Hawai'i 398, 463 P.3d 1055 (2020), was decided in April of 2020. Until that time, the department and other agencies, including the courts and the Department of Public Safety, were denying credit for time served to defendants pursuant to section 706-671(3), HRS. The bill will allow section 706-671(3) to apply as originally intended, consistently with how it has been applied in the eight years prior to the decision in Abihai.

GENERAL FUND: None.

OTHER FUNDS: None.

PPBS PROGRAM  
DESIGNATION: None.

OTHER AFFECTED  
AGENCIES: Department of Public Safety.

EFFECTIVE DATE: Upon approval.