
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 through a court
2 decision, Massachusetts became the first state to ban life
3 without parole sentences for individuals eighteen years old
4 through twenty years old, considering those in this age group to
5 be "emerging adults". The court extended the bright line age
6 cut-off from eighteen years of age to twenty years of age, in
7 part, due to neuroscience research that supports that brain
8 maturation continues through an individual's mid-twenties.

9 The purpose of this Act is to prohibit sentencing
10 defendants who were under the age of twenty-one at the time of
11 the offense to life imprisonment without the possibility of
12 parole.

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

16 "§706- Life imprisonment without the possibility of
17 parole; persons under the age of twenty-one; prohibited.



1 Notwithstanding any other law to the contrary, no person
2 convicted of a crime who was under the age of twenty-one at the
3 time of the offense shall be sentenced to life imprisonment
4 without the possibility of parole."

5 SECTION 3. Section 706-656, Hawaii Revised Statutes, is
6 amended by amending subsection (1) to read as follows:

7 "(1) Persons [~~eighteen~~] twenty-one years of age or [~~over~~]
8 older at the time of the offense who are convicted of first
9 degree murder or first degree attempted murder shall be
10 sentenced to life imprisonment without the possibility of
11 parole.

12 As part of [~~such~~] the sentence, the court shall order the
13 director of corrections and rehabilitation and the Hawaii
14 paroling authority to prepare an application for the governor to
15 commute the sentence to life imprisonment with parole at the end
16 of twenty years of imprisonment; provided that persons who are
17 repeat offenders under section 706-606.5 shall serve at least
18 the applicable mandatory minimum term of imprisonment.

19 Persons under the age of [~~eighteen~~] twenty-one years at the
20 time of the offense who are convicted of first degree murder or



1 first degree attempted murder shall be sentenced to life
2 imprisonment with the possibility of parole."

3 SECTION 4. Section 706-657, Hawaii Revised Statutes, is
4 amended to read as follows:

5 **"§706-657 Enhanced sentence for second degree murder. (a)**

6 The court may sentence a person who was [~~eighteen~~] twenty-one
7 years of age or [~~ever~~] older at the time of the offense and who
8 has been convicted of murder in the second degree to life
9 imprisonment without the possibility of parole under section
10 706-656 if the court finds that the murder was especially
11 heinous, atrocious, or cruel, manifesting exceptional depravity
12 or that the person was previously convicted of the offense of
13 murder in the first degree or murder in the second degree in
14 this State or was previously convicted in another jurisdiction
15 of an offense that would constitute murder in the first degree
16 or murder in the second degree in this State. [~~As used in this~~
17 ~~section, the phrase "especially heinous, atrocious, or cruel,~~
18 ~~manifesting exceptional depravity" means a conscienceless or~~
19 ~~pitiless crime which is unnecessarily torturous to a victim and~~
20 ~~"previously convicted" means a sentence imposed at the same time~~



1 ~~or a sentence previously imposed which has not been set aside,~~
2 ~~reversed, or vacated.]~~

3 **(b)** Hearings to determine the grounds for imposing an
4 enhanced sentence for second degree murder may be initiated by
5 the prosecutor or by the court on its own motion. The court
6 shall not impose an enhanced term unless the ground therefor has
7 been established at a hearing after the conviction of the
8 defendant and on written notice to the defendant of the ground
9 proposed. Subject to the provision of section 706-604, the
10 defendant shall have the right to hear and controvert the
11 evidence against the defendant and to offer evidence upon the
12 issue.

13 **(c)** The provisions pertaining to commutation in section
14 706-656(2) [7] shall apply to persons sentenced pursuant to this
15 section.

16 **(d)** As used in this section:

17 "Especially heinous, atrocious, or cruel, manifesting
18 exceptional depravity" means a conscienceless or pitiless crime
19 that is unnecessarily torturous to a victim.



1 "Previously convicted" means a sentence imposed at the same
2 time or a sentence previously imposed that has not been set
3 aside, reversed, or vacated."

4 SECTION 5. Section 706-662, Hawaii Revised Statutes, is
5 amended to read as follows:

6 **"§706-662 Criteria for extended terms of imprisonment. A**
7 defendant who has been convicted of a felony may be subject to
8 an extended term of imprisonment under section 706-661 if it is
9 proven beyond a reasonable doubt that an extended term of
10 imprisonment is necessary for the protection of the public and
11 that the convicted defendant satisfies one or more of the
12 following criteria:

13 (1) The defendant is a persistent offender in that the
14 defendant has previously been convicted of two or more
15 felonies committed at different times when the
16 defendant was [~~eighteen~~] twenty-one years of age or
17 older;

18 (2) The defendant is a professional criminal in that:

19 (a) The circumstances of the crime show that the
20 defendant has knowingly engaged in criminal
21 activity as a major source of livelihood; or



1 (b) The defendant has substantial income or resources
2 not explained to be derived from a source other
3 than criminal activity;

4 (3) The defendant is a dangerous person in that the
5 defendant has been subjected to a psychiatric or
6 psychological evaluation that documents a significant
7 history of dangerousness to others resulting in
8 criminally violent conduct, and this history makes the
9 defendant a serious danger to others. Nothing in this
10 section precludes the introduction of victim-related
11 data to establish dangerousness in accord with the
12 Hawaii rules of evidence;

13 (4) The defendant is a multiple offender in that:

14 (a) The defendant is being sentenced for two or more
15 felonies or is already under sentence of
16 imprisonment for any felony; or

17 (b) The maximum terms of imprisonment authorized for
18 each of the defendant's crimes, if made to run
19 consecutively, would equal or exceed in length
20 the maximum of the extended term imposed or would



1 equal or exceed forty years if the extended term
2 imposed is for a class A felony;

3 (5) The defendant is an offender against the elderly, the
4 handicapped, or a minor eight years of age or younger
5 in that:

6 (a) The defendant attempts or commits any of the
7 following crimes: murder, manslaughter, a sexual
8 offense that constitutes a felony under chapter
9 707, robbery, felonious assault, burglary, or
10 kidnapping; and

11 (b) The defendant, in the course of committing or
12 attempting to commit the crime, inflicts serious
13 or substantial bodily injury upon a person who
14 has the status of being:

15 (i) Sixty years of age or older;

16 (ii) Blind, a paraplegic, or a quadriplegic; or

17 (iii) Eight years of age or younger; and

18 the person's status is known or reasonably should
19 be known to the defendant;

20 (6) The defendant is a hate crime offender in that:



- 1 (a) The defendant is convicted of a crime under
2 chapter 707, 708, or 711; and
- 3 (b) The defendant intentionally selected a victim or,
4 in the case of a property crime, the property
5 that was the object of a crime, because of
6 hostility toward the actual or perceived race,
7 religion, disability, ethnicity, national origin,
8 gender identity or expression, or sexual
9 orientation of any person. For purposes of this
10 subsection, "gender identity or expression"
11 includes a person's actual or perceived gender,
12 as well as a person's gender identity, gender-
13 related self-image, gender-related appearance, or
14 gender-related expression, regardless of whether
15 that gender identity, gender-related self-image,
16 gender-related appearance, or gender-related
17 expression is different from that traditionally
18 associated with the person's sex at birth; or
- 19 (7) The defendant is convicted under section 707-702.5 and
20 the defendant did not remain at the scene of the crime
21 and render reasonable assistance to an injured person,



1 including acts and omissions in violation of section
2 291C-12."

3 SECTION 6. Statutory material to be repealed is bracketed
4 and stricken. New statutory material is underscored.

5 SECTION 7. This Act shall take effect upon its approval.



Report Title:

Penal Code; Sentencing; Life Without Parole; Persons Under
Twenty-one

Description:

Prohibits sentencing persons who were under the age of twenty-
one at the time of the offense to life imprisonment without the
possibility of parole. (CD1)

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

