

## ACT 188

S.B. NO. 1624

A Bill for an Act Relating to the Application of the Hawaii Penal Code to Persons Sentenced Prior to its Effective Date.

*Be It Enacted by the Legislature of the State of Hawaii:*

**SECTION 1. Purpose.** The legislature finds that some persons convicted of the same crimes are under different sentences and serving different terms of imprisonment.

The purpose of this Act is to conform the sentences of certain felons convicted prior to the effective date of the Hawaii Penal Code to the provisions within the code. The intent is to grant equal application of justice demanded by adherence to the highest standards of jurisprudence.

**SECTION 2. General applicability.**

- (1) All convicted felons who have not been discharged from institutional custody by the State and who did not receive the maximum term of sentence upon conviction under the provisions of the Hawaii Penal Code of 1972,<sup>†</sup> and make initial determination as to whether further deliberation of each such public offender's case should be pursued as (a) one for ordinary term under Section 660 of the Hawaii Penal Code or (b) one for extended term under Section 661 or of sentence for offenses of murder under Section 606 of the Hawaii Penal Code.
- (2) The Court in each case shall review those maximum terms of sentence which were not given under the provisions of the Penal Code of 1972.
- (3) The Court may by order reset the maximum term of sentence in accordance with provisions of the Hawaii Penal Code of 1972 to comply with the category or class of crime as determined by the Court. The Court shall not be obligated to order the resetting of the maximum term of sentence in any individual case. The Court may do so in any such case at its own discretion or upon demonstration of cause by the convicted offender under consideration.
- (4) For the public offenders, whose parole, discharge, or other form of release has been granted by the proper authority, such sentences do not fall under the provisions of this Act.

<sup>†</sup>So in original, but it appears that some words are missing from this section at the place indicated by the dagger.

- (5) No later than 90 days after the effective date of the Act, the director of the department of social services and housing shall submit to each Court the respective list of those public offenders eligible under this Act.
- (6) Should the Court's order resetting the maximum term of sentence cause the public offender to have served the maximum term, or more, the convicted felon shall be discharged from custody, effective the date of the order.
- (7) The Court shall follow in all cases those policies of the Hawaii Penal Code for sentencing generally where an order to reset the maximum term of sentence is to be given under the provisions of this Act.
- (8) In no case shall the maximum term of sentence be increased under the provisions of this Act.
- (9) Notwithstanding Section 668 of the Hawaii Penal Code, the Court shall, in the case of public offenders presently serving consecutive terms, have discretion as to whether concurrent or consecutive terms are to be applied.

**SECTION 3. Ordinary terms.**

Where the Court has determined that ordinary term under Section 660 of the Hawaii Penal Code is applicable, there shall be no automatic right to appear before the Court of jurisdiction for each public offender qualified under this Act, nor shall the Court be required to hold formal hearings before the order resetting maximum sentence. The Court, at its discretion or upon written demonstration of cause by the public offender, may do either or both in its deliberation. In each case, the Court shall inform the convicted felon in writing as to its order within 10 working days of determination, and all such orders shall become a matter of record for the Court.

**SECTION 4. Extended terms and special cases.**

- (1) Where the Court has determined that extended term under Section 661 or of sentence for offense or murder under Section 606 of the Hawaii Penal Code is applicable, a formal hearing before the original Court with jurisdiction shall be required.
- (2) Such hearings shall be conducted under the Extended Sentencing or Special Sentencing provisions of the Hawaii Penal Code, whichever shall apply. The same jurisdiction for ordering sentencing under these provisions shall apply to the resetting of the maximum term of sentence for "Special Cases" under the provisions of this Act.

**SECTION 5. Good time credits.**

In those cases where the public offender received the original maximum and minimum term of sentence prior to the effective date of Act 264, Session Laws of Hawaii 1967, and has been continuously incarcerated under the authority of the State of Hawaii without obtaining parole, discharge or other form of release from custody, no part of this Act shall be interpreted as removing any "good time" credit from either the maximum or minimum term of sentence.

**SECTION 6. Validity of conviction.**

This Act is for special persons under special conditions, and no part of this Act shall be interpreted as to effect the procedural validity of any conviction for any such person.

**SECTION 7. Effective date.**

This Act shall take effect upon its approval.

(Approved June 2, 1975.)