

ACT 154

H.B. NO. 2786-76

A Bill for an Act Relating to Deferred Acceptance of Guilty Pleas.

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

SECTION 1. The legislature finds and declares that in certain criminal cases, particularly those involving first time, accidental, or situational offenders, it is in the best interest of the State and the defendant that the defendant be given the opportunity to keep his record free of a criminal conviction, if he can comply with certain terms and conditions during a period designated by court order. Especially where youth is involved, a record free of a felony conviction, which would foreclose certain educational, professional, and job opportunities may, in a proper case, be more conducive to offender rehabilitation and crime prevention than the deterrent effects of a conviction and sentence.

The purpose of this Act is to establish a means whereby a court in its discretion may defer acceptance of a guilty plea for a certain period on certain conditions with respect to certain defendants. The completion of such period in compliance with such conditions may then result in the discharge of the defendant and expungement of the matter from his record.

SECTION 2. The Hawaii Revised Statutes is amended by adding a new chapter to title 38 to be appropriately designated and to read as follows:

**“CHAPTER
CRIMINAL PROCEDURE: DEFERRED ACCEPTANCE
OF GUILTY PLEA**

Sec. -1 Deferred acceptance of guilty plea, discharge and dismissal, expungement of records. (a) Upon proper motion as provided by this chapter:

- (1) When a defendant voluntarily pleads guilty to a felony or misdemeanor or petty misdemeanor;
- (2) It appears to the court that the defendant is not likely again to engage in a criminal course of conduct; and
- (3) The ends of justice and the welfare of society do not require that the defendant shall presently suffer the penalty imposed by law,

the court, without entering a judgment of guilt and with the consent of the defendant and after considering the recommendations, if any, of the prosecutor, may defer further proceeding.

(b) The proceedings may be deferred upon any of the conditions specified by section -624, Hawaii Penal Code. The court may defer the proceedings for such period of time as the court shall direct but in no case to exceed the maximum sentence allowable. The defendant may be subject to bail or recognizance at the court's discretion during the period which the proceedings are deferred.

(c) Upon his completion of the period designated by the court and in compliance with the terms and conditions established, the court shall discharge the defendant and dismiss the charge against him.

(d) Discharge of the defendant and dismissal of the charge against him under this section shall be without adjudication of guilt, shall eliminate any civil admission of guilt, and is not a conviction.

(e) Upon discharge of the defendant and dismissal of the charge against him under this section, the defendant may apply for expungement, pursuant to Section 831-3.2, Hawaii Revised Statutes, from all official records all recordation relating to his arrest, arraignment, indictment, information, plea of guilty, or dismissal and discharge, except that all records of his arrest, arraignment, indictment, information, plea of guilty, or dismissal and discharge shall be preserved at the police department of the county where the offense occurred, in the case of misdemeanors, and at the office of the Attorney General in the case of felonies, and made accessible to the adult probation division and any court for purposes of sentencing for any offense committed by the defendant.

Sec. -2 Plea of guilty; procedure. Upon motion made before sentence by the defendant, the prosecutor, or on its own motion, the court will either proceed in accordance with section -1, or deny the motion and accept the defendant's plea of guilty, or allow the defendant to withdraw his plea of guilty only for good cause.

Sec. -3 Violation of terms and conditions during deferment; result.

Upon violation of a term or condition set by the court for a deferred acceptance of guilty plea, the court may enter an adjudication of guilt and proceed as otherwise provided.

Sec. -4 Chapter not applicable; when. This chapter shall not apply when:

- (1) The offense charged involves the intentional, knowing, reckless, or grossly negligent killing of another person;
- (2) The offense charged involves the cruel or reckless bodily injury of another person;
- (3) The offense charged involves a conspiracy or solicitation to intentionally, knowingly, or recklessly kill another person or to cause serious bodily injury to another person;
- (4) The offense charged is a class A felony;
- (5) The offense charged is nonprobationable;
- (6) The defendant has been convicted of any offense defined as a felony by the Hawaii Penal Code or has been convicted for any conduct which if perpetrated in this state would be punishable as a felony;
- (7) The defendant is found to be a law violator or delinquent child for the commission of any offense defined as a felony by the Hawaii Penal Code or for any conduct which if perpetrated in this state would constitute a felony;
- (8) The defendant has a prior conviction for a felony committed in any state, federal, or foreign jurisdiction.

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

SECTION 3. This Act shall take effect upon its approval.

(Approved May 27, 1976.)

*Edited accordingly.