

ACT 204

H.B. NO. 3196-76

A Bill for an Act Relating to the Use of Firearms in Certain Offenses.

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

SECTION 1. Findings and purpose. Recent statistics and studies indicate that the use of firearms in the commission of criminal activities has progressively increased to the point where a significant percentage of felony cases have involved the use of a firearm. Until strict firearms control laws become a reality, the high risk of injury to victims of criminal action will continue to exist. The legislature finds that alternative methods of discouraging the use of firearms such as stronger and more certain penalties should be instituted. It is the purpose of this Act in view of the increasing use of firearms in criminal actions to provide a deterrent effect against such use for the protection of the people in this State.

SECTION 2. Section 660, Chapter 6 of Act 9, Session Laws of Hawaii 1972 (Hawaii Penal Code) is amended to read as follows:

Sec. 660 Sentence of imprisonment for felony; ordinary terms. (a) A person who has been convicted of a felony may be sentenced to an indeterminate term of imprisonment except as provided for in section relating to the use of firearms in certain felony offenses. When ordering such a sentence, the court shall impose the maximum length of imprisonment which shall be as follows:

- (1) For a class A felony—20 years;
- (2) For a class B felony—10 years; and
- (3) For a class C felony—5 years.

The minimum length of imprisonment shall be determined by the board of paroles and pardons in accordance with section 669.

SECTION 3. Chapter 6 of Act 9, Session Laws of Hawaii 1972 (Hawaii Penal Code) is amended by adding a new section to be appropriately designated and to read as follows:

“Sec. Sentence of imprisonment for use of a firearm in a felony. (a) A person convicted of a felony, where the person had a firearm in his possession and

threatened its use or used the firearm while engaged in the commission of the felony, may be sentenced to a mandatory term of imprisonment the length of which shall be as follows:

- (1) For a class A felony—up to 10 years; and
- (2) For a class B felony—up to 5 years.

The sentence of imprisonment for a felony involving the use of a firearm as provided in this subsection shall not be subject to the procedure for determining minimum term of imprisonment prescribed under section 669, provided further that a person who is imprisoned in a correctional institution as provided in this subsection shall become subject to the parole procedure as prescribed in section 670 only upon the expiration of the term of mandatory imprisonment fixed under section 660 (a) (1) or (2), herein.

(b) A person convicted of a second firearm felony offense as provided in section (a), herein, where the person had a firearm in his possession and threatened its use or used the firearm while engaged in the commission of the felony, shall be sentenced to a mandatory term of imprisonment the length of which shall be as follows:

- (1) For a class A felony—10 years; and
- (2) For a class B felony—10 years.

The sentence of imprisonment for a second felony offense involving the use of a firearm as provided in this subsection shall be exempted from the procedure for determining minimum term of imprisonment prescribed under section 669, provided further that a person who is imprisoned in a correctional institution as provided in this subsection shall become subject to the parole procedure as prescribed in section 670 only upon the expiration of the term of mandatory imprisonment fixed under section 660(b) (1) or (2), herein.

As used in this subsection, "firearm" has the meaning defined in section 134-1."

SECTION 4. If any provision of this Act, or the application thereof to any person or circumstances is held invalid, the invalidity does not affect other provisions or applications of the Act which can be given effect without the invalid provision or application, and to this end the provisions of this Act are severable.

SECTION 5. Statutory material to be repealed is bracketed. New material is underscored. In printing this Act, the revisor of statutes need not include the brackets, the bracketed material, or the underscoring.*

SECTION 6. This Act shall take effect upon its approval and shall apply to all felonies committed after the effective date of this Act.

(Approved June 7, 1976.)

*Edited accordingly.