

ACT 181

H.B. NO. 3

A Bill for an Act Relating to Sections 701-107, 701-108, 706-606.5, 706-610, 706-640, 706-656, 707-700, 707-702, 707-711, 707-730, 707-731, and 707-732.

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

SECTION 1. Section 701-107, Hawaii Revised Statutes, is amended by amending subsection (1) to read as follows:

“(1) An offense defined by this Code or by any other statute of this State for which a sentence of imprisonment is authorized constitutes a crime. Crimes are of three grades: felonies, misdemeanors, and petty misdemeanors. Felonies [are of] include murder in the first and second degrees, attempted murder in the first and second degrees, and the following three classes: class A, class B, and class C.”

SECTION 2. Section 701-108, Hawaii Revised Statutes, is amended by amending subsection (1) to read as follows:

“(1) A prosecution for murder, murder in the first and second degrees, attempted murder, and attempted murder in the first and second degrees may be commenced at any time.”

SECTION 3. Section 706-606.5, Hawaii Revised Statutes, is amended to read as follows:

**“§706-606.5 Sentencing of repeat offenders.** (1) Notwithstanding section 706-669 and any other law to the contrary, any person convicted of murder in the second degree, any class A felony, any class B felony, or any of the following class C felonies: section 707-703 relating to negligent homicide in the first degree; 707-711 relating to assault in the second degree; 707-713 relating to reckless endangering in the first degree; 707-716 relating to terroristic threatening in the first degree; 707-721 relating to unlawful imprisonment in the first degree; 707-732 relating to sexual assault or rape in the third degree;<sup>1</sup> 707-735 relating to sodomy in the third degree; 707-736 relating to sexual abuse in the first degree; 707-751 relating to promoting child abuse in the second degree; 707-766 relating to extortion in the second degree; 708-811 relating to burglary in the second degree; 708-821 relating to

criminal property damage in the second degree; 708-831 relating to theft in the first degree as amended by Act 68, Session Laws of Hawaii 1981; 708-831 relating to theft in the second degree; 708-852 relating to forgery in the second degree; 708-854 relating to criminal possession of a forgery device; 710-1031 relating to intimidation of a correctional worker; 710-1071 relating to intimidating a witness; 711-1103 relating to riot; 712-1203 relating to promoting prostitution in the second degree; 712-1221 relating to gambling in the first degree; 712-1224 relating to possession of gambling records in the first degree; 712-1243 relating to promoting a dangerous drug in the third degree; 712-1247 relating to promoting a detrimental drug in the first degree; 134-7 relating to ownership or possession of firearms or ammunition by persons convicted of certain crimes; 134-8 relating to ownership, etc., of prohibited weapons; 134-9 relating to permits to carry, or who is convicted of attempting to commit murder in the second degree, any class A felony, any class B felony, or any of the class C felony offenses enumerated above and who has a prior conviction or prior convictions for the following felonies, including an attempt to commit the same: murder, murder in the first or second degree, a class A felony, a class B felony, [or] any of the class C felony offenses enumerated above, or any felony conviction of another jurisdiction shall be sentenced to a mandatory minimum period of imprisonment without possibility of parole during such period as follows:

- (a) One prior felony conviction:
  - (i) Where the instant conviction is for murder in the second degree or attempted murder in the second degree—ten years;
  - [(i)] (ii) Where the instant conviction is for a class A felony—six years, eight months;
  - [(ii)] (iii) Where the instant conviction is for a class B felony—three years, four months;
  - [(iii)] (iv) Where the instant conviction is for a class C felony offense enumerated above—one year, eight months;
- (b) Two prior felony convictions:
  - (i) Where the instant conviction is for murder in the second degree or attempted murder in the second degree—twenty years;
  - [(i)] (ii) Where the instant conviction is for a class A felony—thirteen years, four months;
  - [(ii)] (iii) Where the instant conviction is for a class B felony—six years, eight months;
  - [(iii)] (iv) Where the instant conviction is for a class C felony offense enumerated above—three years, four months;
- (c) Three or more prior felony convictions:
  - (i) Where the instant conviction is for murder in the second degree or attempted murder in the second degree—thirty years;
  - [(i)] (ii) Where the instant conviction is for a class A felony—twenty years;
  - [(ii)] (iii) Where the instant conviction is for a class B felony—ten years;
  - [(iii)] (iv) Where the instant conviction is for a class C felony offense enumerated above—five years.

(2) Except as in subsection (3), a person shall not be sentenced to a mandatory minimum period of imprisonment under this section unless the instant felony offense was committed during such period as follows:

- (a) Within twenty years after a prior felony conviction where the prior felony conviction was for murder in the first degree or attempted murder in the first degree;
  - (b) Within twenty years after a prior felony conviction where the prior felony conviction was for murder in the second degree or attempted murder in the second degree;
  - [(a)] (c) Within twenty years after a prior felony conviction where the prior felony conviction was for a class A felony;
  - [(b)] (d) Within ten years after a prior felony conviction where the prior felony conviction was for a class B felony;
  - [(c)] (e) Within five years after a prior felony conviction where the prior felony conviction was for a class C felony offense enumerated above.];
  - (f) Within the maximum term of imprisonment possible after a prior felony conviction of another jurisdiction.
- (3) If a person was sentenced for a prior felony conviction to a special term under section 706-667, then the person shall not be sentenced to a mandatory minimum period of imprisonment under this section unless the instant felony offense was committed during such period as follows:
- (a) Within eight years after a prior felony conviction where the prior felony conviction was for a class A felony;
  - (b) Within five years after the prior felony conviction where the prior felony conviction was for a class B felony;
  - (c) Within four years after the prior felony conviction where the prior felony conviction was for a class C felony [offenses] offense enumerated above.
- (4) The sentencing court may impose the above sentences consecutive to any sentence imposed on the defendant for a prior conviction, but such sentence shall be imposed concurrent to the sentence imposed for the instant conviction. The court may impose a lesser mandatory minimum period of imprisonment without possibility of parole than that mandated by this section where the court finds that strong mitigating circumstances warrant such action. Strong mitigating circumstances shall include, but will not be limited to, the provisions of section 706-621. The court shall provide a written opinion stating its reasons for imposing the lesser sentence.

For purposes of this section:

- [(a)] A prior felony conviction is a conviction for a felony offense which was committed after a previous felony conviction;
- (b)] (a) Convictions under two or more counts of an indictment or complaint shall be considered a single conviction without regard to when the convictions occur;
- [(c)] (b) A prior conviction in this or another jurisdiction shall be deemed a felony conviction if it was punishable by a sentence of death or of imprisonment in excess of one year;
- [(d)] (c) A conviction occurs on the date judgment is entered.”

SECTION 4. Section 706-610, Hawaii Revised Statutes, is amended by amending subsection (1) to read as follows:

“(1) Apart from first and second degree murder and attempted first and second degree murder, felonies defined by this Code are classified, for the purpose of sentence, into three classes, as follows:

- (a) Class A felonies;
- (b) Class B felonies; and
- (c) Class C felonies.

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A felony is a class A, class B, or class C felony when it is so designated by this Code. [A] Except for first and second degree murder and attempted first and second degree murder, a crime declared to be a felony, without specification of class, is a class C felony."

SECTION 5. Section 706-640, Hawaii Revised Statutes, is amended to read as follows:

**"§706-640 Authorized fines.** A person who has been convicted of an offense may be sentenced to pay a fine not exceeding:

- (1) \$50,000, when the conviction is of a class A felony[.]; murder in the first or second degree, or attempted murder in the first or second degree;
- (2) \$25,000, when the conviction is of a class B felony;
- (3) \$10,000, when the conviction is of a class C felony;
- (4) \$2,000, when the conviction is of a misdemeanor;
- (5) \$1,000, when the conviction is of a petty misdemeanor or a violation;
- (6) Any higher amount equal to double the pecuniary gain derived from the offense by the defendant;
- (7) Any higher or lower amount specifically authorized by statute."

SECTION 6. Section 706-656, Hawaii Revised Statutes, is amended to read as follows:

**"[§706-656]] Terms of imprisonment for first and second degree murder and attempted first and second degree murder.** (1) Persons convicted of first degree murder or first degree attempted murder shall be sentenced to life imprisonment without possibility of parole.

As part of such sentence the court shall order the director of the department of social services and housing and the Hawaii paroling authority to prepare an application for [commutation of] the governor to commute the sentence to life imprisonment with parole at the end of twenty years of imprisonment[.]; provided that persons who are repeat offenders under section 706-606.5 shall serve at least the applicable mandatory minimum term of imprisonment.

(2) Persons convicted of second degree murder and attempted second degree murder shall be sentenced to life imprisonment with possibility of parole. The minimum length of imprisonment shall be determined by the Hawaii paroling authority[.]; provided that persons who are repeat offenders under section 706-606.5 shall serve at least the applicable mandatory minimum term of imprisonment."

SECTION 7. Section 707-700, Hawaii Revised Statutes, is amended by amending the definition of "sexual contact" to read:

**"**"Sexual contact" means any touching of the sexual or other intimate parts of a person not married to the actor, or<sup>1</sup> of the sexual or other intimate parts of the actor by the person, whether directly or through the clothing or other material intended to cover the sexual or other intimate parts."<sup>1</sup>

SECTION 8. Section 707-702, Hawaii Revised Statutes, is amended by amending subsection (2) to read as follows:

**"(2)** In a prosecution for murder in the first and second degrees it is a defense, which reduces the offense to manslaughter, that the defendant was, at the time he caused the death of the other person, under the influence of extreme mental or emotional disturbance for which there is a reasonable explanation. The reasonableness of the explanation shall be determined

from the viewpoint of a person in the defendant's situation under the circumstances as he believed them to be."

SECTION 9. Section 707-730, Hawaii Revised Statutes, is amended by amending subsection (1) to read as follows:

- if:
- (a) The person knowingly subjects another person to an act of sexual penetration by strong compulsion;
  - (b) The person knowingly subjects to sexual penetration another person who is less than fourteen years old[.]; provided this paragraph shall not be construed to prohibit practitioners licensed under chapter 453, 455, or 460, from performing any act within their respective practices."

SECTION 10. Section 707-731, Hawaii Revised Statutes, is amended by amending subsection (1) to read as follows:

- degree if:
- (a) The person knowingly subjects another person to an act of sexual penetration by compulsion;
  - (b) The person knowingly subjects to sexual penetration another person who is mentally defective, mentally incapacitated, or physically helpless; [or]
  - (c) The person, while employed in a state correctional facility, knowingly subjects to sexual penetration an imprisoned person[.]; provided paragraphs (b) and (c) shall not be construed to prohibit practitioners licensed under chapter 453, 455, or 460, from performing any act within their respective practices."

SECTION 11. Section 707-732, Hawaii Revised Statutes, is amended by amending subsection (1) to read as follows:

- if:
- (a) The person recklessly subjects another person to an act of sexual penetration by compulsion;
  - (b) The person knowingly subjects to sexual contact another person who is less than fourteen years old or causes such a person to have sexual contact with the person;
  - (c) The person knowingly subjects to sexual contact another person who is mentally defective, mentally incapacitated, or physically helpless, or causes such a person to have sexual contact with the actor; or
  - (d) The person, while employed in a state correctional facility, knowingly subjects to sexual contact an imprisoned person or causes such person to have sexual contact with the actor[.];
  - (e) The person knowingly, by strong compulsion, has sexual contact with another person or causes another person to have sexual contact with the actor; provided that paragraphs (b), (c), and (d) shall not be construed to prohibit practitioners licensed under chapter 453, 455, or 460, from performing any act within their respective practices."

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**SECTION 12.** This Act does not affect rights and duties that matured, penalties that were incurred, and proceedings that were begun, before its effective date.

**SECTION 13.** Statutory material to be repealed is bracketed. New statutory material is underscored.

**SECTION 14.** This Act shall take effect upon its approval.

(Approved June 6, 1987.)

### **Note**

1. So in original.