

A Bill for an Act Relating to Sentencing.

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

SECTION 1. Section 706-656, Hawaii Revised Statutes, is amended by amending subsection (2) to read as follows:

“(2) [Persons] Except as provided in section 706-657, pertaining to enhanced sentence for second degree murder, 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; and provided further that in any cases designated in section 706-657, the person may be sentenced to life imprisonment without possibility of parole.]

If the court imposes a sentence of life imprisonment without possibility of parole[,] pursuant to section 706-657, as part of [such] that sentence, the court shall order the director of public safety and the Hawaii paroling authority to prepare an application for 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.”

SECTION 2. Section 706-657, Hawaii Revised Statutes, is amended to read as follows:

“**[§706-657] Enhanced sentence for second degree murder.** The court may sentence a person who has been convicted of murder in the second degree to life imprisonment without possibility of parole under section 706-656 if the court finds that the murder was especially heinous, atrocious, or cruel, manifesting exceptional depravity[,] or that the person was previously convicted of the offense of murder in the first degree or murder in the second degree in this State or was previously convicted in another jurisdiction of an offense that would constitute murder in the first degree or murder in the second degree in this State. As used in this section, the phrase “especially heinous, atrocious, or cruel, manifesting exceptional depravity” means a conscienceless or pitiless crime which is unnecessarily torturous to a victim[,] and “previously convicted” means a sentence imposed at the same time or a sentence previously imposed which has not been set aside, reversed, or vacated.

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

The provisions pertaining to commutation in section 706-656(2), shall apply to persons sentenced pursuant to this section.”

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SECTION 3. This Act does not affect rights and duties that matured, penalties that were incurred, and proceedings that were begun, before its effective date.

SECTION 4. Statutory material to be repealed is bracketed. New statutory material is underscored.

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

(Approved April 22, 1996.)