

ACT 87

H.B. NO. 3046

A Bill for an Act Relating to the Penal Code.

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

SECTION 1. 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 endan-

gering 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; 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; 708-835.5 relating to theft of livestock; 708-836 relating to unauthorized control of propelled vehicle;¹ 708-852 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, 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;
- (ii) Where the instant conviction is for a class A felony—six years, eight months;
- (iii) Where the instant conviction is for a class B felony—three years, four months;
- (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;
- (ii) Where the instant conviction is for a class A felony—thirteen years, four months;
- (iii) Where the instant conviction is for a class B felony—six years, eight months;
- (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;
- (ii) Where the instant conviction is for a class A felony—twenty years;
- (iii) Where the instant conviction is for a class B felony—ten years;
- (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;
- (c) Within twenty years after a prior felony conviction where the prior felony conviction was for a class A felony;
- (d) Within ten years after a prior felony conviction where the prior felony conviction was for a class B felony;
- (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 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] shall not be limited to² the provisions of section 706-621. The court shall provide a written opinion stating its reasons for imposing the lesser sentence.

(5) A person who is imprisoned in a correctional institution pursuant to subsection (1) shall not be paroled prior to the expiration of the mandatory minimum term of imprisonment imposed pursuant to subsection (1).

(6) For purposes of this section:

- (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;
- (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;
- (c) A conviction occurs on the date judgment is entered.”

SECTION 2. Section³ 708, Hawaii Revised Statutes, is amended by adding a new section to be appropriately designated and to read as follows:

“§708- Unauthorized entry into motor vehicle. (1) A person commits the offense of unauthorized entry into motor vehicle if the person intentionally or

knowingly enters or remains unlawfully in a motor vehicle with the intent to commit a crime against a person or against property rights.

(2) Unauthorized entry into motor vehicle is a class C felony.”

SECTION 3. Chapter 711, Hawaii Revised Statutes, is amended by adding a new section to be appropriately designated and to read as follows:

“§711- Interference with the operator of a public transit vehicle. (1)

A person commits the offense of interference with the operator of a public transit vehicle if the person interferes with the operation of a public transit vehicle or lessens the ability of the operator to operate the public transit vehicle by:

- (a) Intentionally, knowingly, or recklessly causing bodily injury to the operator of the public transit vehicle; or
- (b) Threatening, by word or conduct, to cause bodily injury to the operator of the public transit vehicle with the intent to terrorize, or in reckless disregard of the risk of terrorizing the operator of the public transit vehicle.

(2) For the purposes of this section, “public transit vehicle” is a public paratransit vehicle providing service to the disabled, any transit vehicle used for the transportation of passengers in return for legally charged fees or fares, any school bus, or any taxi.

(3) Interference with the operator of a public transit vehicle is a class C felony.”

SECTION 4. This Act does not affect rights and duties that matured, penalties that were incurred, and proceedings that were begun, before its effective date.

SECTION 5. Statutory material to be repealed is bracketed. New statutory material is underscored.⁴

SECTION 6. This Act shall take effect upon its approval.

(Approved June 6, 1996.)

Notes

- 1. Should be underscored.
- 2. Prior to amendment “,” appeared here.
- 3. Should be “chapter”.
- 4. Edited pursuant to HRS §23G-16.5.