

A Bill for an Act Relating to Sentencing.

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

SECTION 1. Chapter 706, Hawaii Revised Statutes, is amended by adding a new section to be appropriately designated and to read as follows:

**“§706- Special sentencing of habitual violent felons.** (1) Notwithstanding any other provision of law to the contrary, a habitual violent felon shall be sentenced to both:

- (a) A mandatory minimum term of imprisonment of not less than thirty years; and
  - (b) A mandatory indeterminate term of life imprisonment.
- (2) A habitual violent felon shall not be eligible for parole before serving the mandatory minimum term under subsection (1) or (2), as applicable.
- (3) Except for work furlough programs in the final year of a sentence that require incarceration during the time the inmate is not working or traveling to or from work, a habitual violent felon shall not be eligible for pre-release, furlough, or other modified terms of imprisonment without the written authorization of the governor, which authorization shall not be delegable.

(4) A defendant is a “habitual violent felon” if:

- (a) The defendant is at least eighteen years old at the time the defendant committed the current offense;
- (b) The current conviction is for murder in the second degree or any class A or class B felony that is a crime of violence;
- (c) The defendant has at least two prior and separate felony convictions for:
  - (i) Murder in any degree;
  - (ii) Any class A felony or class B felony that is a crime of violence; or
  - (iii) Any federal offense that is comparable to a crime of violence as defined in subsection (8), or any federal or out-of-state offense that under the laws of this State would be a crime of violence as defined in subsection (6); and
- (d) Either the current conviction or at least one of the prior and separate convictions is for an offense other than burglary in the first degree.

(5) This section shall apply only if the prosecuting attorney brings before the court a motion to sentence under this section that allows the court to advise the defendant of the defendant’s eligibility for sentencing under this section prior to the entry of a verdict of guilty, whether by trial, plea of guilty, or plea of no contest. The motion shall set forth the date and jurisdiction of occurrence of each prior conviction required under subsection (4)(c) and shall specify whether the defendant is subject to the following:

- (a) Sentencing of repeat offenders under section 706-606.5;
  - (b) Repeat violent and sexual offender; enhanced sentence under section 706-606.6;
  - (c) Enhanced sentence for second degree murder under section 706-657; or
  - (d) Sentence of imprisonment for felony; extended terms under section 706-661.
- (6) For the purposes of this section, “crime of violence” means:
- (a) Murder in any degree;
  - (b) Manslaughter;

- (c) Assault in the first degree;
- (d) Kidnapping;
- (e) Sexual assault in the first degree;
- (f) Sexual assault in the second degree;
- (g) Continuous sexual assault of a minor under the age of fourteen years old;
- (h) Robbery in the first degree;
- (i) Robbery in the second degree; and
- (j) Burglary in the first degree.”

SECTION 2. The judiciary shall submit a report to the legislature on the implementation of this Act. The report shall include:

- (1) Data on the number of defendants sentenced under this Act; and
- (2) Data on the number of defendants sentenced under this Act who were also subject to:
  - (a) Sentencing of repeat offenders under section 706-606.5;
  - (b) Repeat violent and sexual offender; enhanced sentence under section 706-606.6;
  - (c) Enhanced sentence for second degree murder under section 706-657; and
  - (d) Sentence of imprisonment for felony; extended terms under section 706-661.

The judiciary shall submit its findings to the legislature no later than twenty days prior to the convening of the regular session of 2011.

SECTION 3. The department of public safety shall submit a report to the legislature on the implementation and effect of this Act. The report shall include:

- (1) If available, data from sentencing simulation models, such as the one established by Act 267 of 2000, to assess the impact of this Act on prison inmate population;
- (2) Data showing the effect of this Act on the inmate population in terms of number of inmates committed to the department of public safety’s custody, and the anticipated financial impact on the department of public safety; and
- (3) Data on the department of public safety’s ability to house and care for inmates committed under this Act.

The department of public safety shall submit its findings to the legislature no later than twenty days prior to the convening of the regular session of 2011.

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. New statutory material is underscored.<sup>1</sup>

SECTION 6. This Act shall take effect upon approval, and shall be repealed on July 1, 2011.

(Approved May 8, 2006.)

**Note**

1. Edited pursuant to HRS §23G-16.5.