

JAN 17 2013

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# A BILL FOR AN ACT

RELATING TO SENTENCING.

**BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF HAWAII:**

1           SECTION 1. The legislature finds that since the enactment  
2 of mandatory minimum sentencing for drug users, the Federal  
3 Bureau of Prisons budget increased from \$220,000,000 in 1986 to  
4 \$5,400,000,000 in 2008. From 2000 to 2009, appropriations for  
5 the Hawaii department of public safety increased ninety per  
6 cent, from \$128,000,000 to \$243,000,000. Mandatory minimum  
7 sentences are statutorily prescribed terms of imprisonment that  
8 automatically attach upon conviction of certain criminal  
9 conduct, usually pertaining to drug or firearm offenses. Absent  
10 very narrow criteria for relief, a sentencing judge is powerless  
11 to mandate a term of imprisonment below the mandatory minimum.  
12 Mandatory minimum sentences for drug offenses rely solely upon  
13 the weight of the substance as a proxy for the degree of  
14 involvement of a defendant's role. Nationwide, mandatory  
15 minimum sentences have consistently been shown to have a  
16 disproportionate impact on persons of color. The United States  
17 Sentencing Commission, in a fifteen-year overview of the federal  
18 sentencing system, concluded that "mandatory penalty statutes



1 are used inconsistently" and disproportionately affect African  
2 American and other defendants of color. As a result, African  
3 American drug defendants of color are twenty per cent more  
4 likely to be sentenced to prison than white drug defendants.  
5 The department of public safety reports that Native Hawaiians  
6 comprise thirty-nine to forty per cent of Hawaii's incarcerated  
7 population, while they represent only twenty-four per cent of  
8 the general population. According to the United States  
9 Department of Justice, the time spent in prison does not affect  
10 recidivism rates. Government surveys document that drug use is  
11 fairly consistent across racial and ethnic groups.

12 In the Anti-Drug Abuse Act of 1986, Congress structured  
13 anti-drug penalties to encourage the Department of Justice to  
14 concentrate its enforcement effort against high-level and major-  
15 level drug traffickers, and provided new, long mandatory minimum  
16 sentences for such offenders, correctly recognizing the federal  
17 role in the combined federal-state drug enforcement effort.  
18 Hawaii's criminal justice approach to drug use is a significant  
19 contributor to the total number of people admitted to prison or  
20 jail. For example, in 2009 approximately two thousand persons  
21 were arrested for drug offenses in Hawaii, with seven hundred  
22 twenty-six persons sentenced to incarceration. Of the seven



1 hundred twenty-six persons incarcerated, thirty-two per cent  
2 were Native Hawaiians. According to the 2004 State of Hawaii  
3 treatment needs assessment program dataset, Native Hawaiians do  
4 not use drugs at widely dissimilar rates to other races or  
5 ethnicities.

6 The legislature further finds that linking drug quantity  
7 with punishment severity has had a particularly profound impact  
8 on women, who are more likely to play peripheral roles in a drug  
9 enterprise than men. However, because prosecutors can attach  
10 drug quantities to an individual regardless of the level of  
11 culpability of a defendant's participation in the charged  
12 offense, women have been exposed to increasingly punitive  
13 sentences to incarceration. In 2000, the department of public  
14 safety reported that more than fifty-six per cent of Hawaii's  
15 incarcerated women were sentenced to mandatory prison terms.  
16 Low-level and mid-level drug offenders can be adequately  
17 prosecuted by the states and punished or supervised in treatment  
18 programs, as appropriate. Research has shown that community-  
19 based drug treatment is more effective both in economic and  
20 social terms than incarceration. Studies have estimated savings  
21 from \$10 to \$18 for every \$1 spent on community-based treatment.



1           It is widely acknowledged that the decades-long war on  
2 drugs is a failure. Federal and state drug enforcement  
3 resources are not being properly focused against high-level  
4 traffickers. In May 2007, the United States Sentencing  
5 Commission issued a report to Congress, stating that "[t]he  
6 majority of federal cocaine offenders generally perform low-  
7 level functions." In discussing drug abuse, the Director of the  
8 National Institute on Drug Abuse, Dr. Nora Volkow, has stated,  
9 "This aberrant behavior has traditionally been viewed as bad  
10 'choices' that are made voluntarily by the addict. However,  
11 recent studies have shown that repeated drug use leads to long-  
12 lasting changes in the brain that undermine voluntary control."

13           The purpose of this Act is to grant sentencing courts the  
14 discretion to sentence a defendant convicted in a class B or  
15 class C felony drug case to a prison sentence of a length  
16 appropriate to an offender's particular offense and underlying  
17 circumstances.

18           SECTION 2. Section 706-660, Hawaii Revised Statutes, is  
19 amended to read as follows:

20           "**§706-660 Sentence of imprisonment for class B and C**  
21 **felonies; ordinary terms[+]; discretionary terms.** [A] (1)  
22 Except as provided in subsection (2), a person who has been



1 convicted of a class B or class C felony may be sentenced to an  
2 indeterminate term of imprisonment except as provided for in  
3 section 706-660.1 relating to the use of firearms in certain  
4 felony offenses and section 706-606.5 relating to repeat  
5 offenders. When ordering such a sentence, the court shall  
6 impose the maximum length of imprisonment which shall be as  
7 follows:

8 (1) For a class B felony--10 years; and

9 (2) For a class C felony--5 years.

10 The minimum length of imprisonment shall be determined by the  
11 Hawaii paroling authority in accordance with section 706-669.

12 (2) A person who has been convicted of a class B or class  
13 C felony for any offense under part IV of chapter 712 may be  
14 sentenced to an indeterminate term of imprisonment except as  
15 provided in sections 706-606.5, 706-660.1, 712-1240.5,  
16 712-1240.7, 712-1240.8, 712-1249.6, and 712-1257.

17 When ordering a sentence under this subsection, the court shall  
18 impose a term of imprisonment which shall be as follows:

19 (1) For a class B felony--10 years or less; and

20 (2) For a class C felony--5 years or less.

21 The minimum length of imprisonment shall be determined by the  
22 Hawaii paroling authority in accordance with section 706-669."



1           SECTION 3. A defendant convicted for any offense under  
2 part IV of chapter 712, Hawaii Revised Statutes, excluding any  
3 defendant sentenced under sections 706-606.5, 706-660.1,  
4 712-1240.5, 712-1240.7, 712-1240.8, 712-1249.6, and 712-1257,  
5 Hawaii Revised Statutes, has the right to a one-time review of  
6 the length of the original prison sentence. The defendant may  
7 petition the original sentencing court for a review of the  
8 original sentence for a possible sentence reduction under this  
9 Act. The original sentencing court's review of a defendant's  
10 original sentence shall consider whether the original sentence  
11 term is proportionate to the offense and underlying  
12 circumstances under the terms of this Act. The court's decision  
13 shall be final and there shall be no review of the court's  
14 decision. A petition for review under this section shall be  
15 filed before July 1, 2015.

16           SECTION 4. Except as provided in section 3, this Act does  
17 not affect rights and duties that matured, penalties that were  
18 incurred, and proceedings that were begun before its effective  
19 date.

20           SECTION 5. Statutory material to be repealed is bracketed  
21 and stricken. New statutory material is underscored.

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1 SECTION 6. This Act shall take effect on July 1, 2013.

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INTRODUCED BY: 



# S.B. NO. 68

**Report Title:**

Sentencing; Drug Offenses; Mandatory Minimums

**Description:**

Allows judges discretion in setting incarceration terms when sentencing drug offenders in class B and class C felony cases to make the length of the sentence proportionate to the offense and related conduct.

*The summary description of legislation appearing on this page is for informational purposes only and is not legislation or evidence of legislative intent.*

