
A BILL FOR AN ACT

RELATING TO THE PENAL CODE.

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

1 SECTION 1. The legislature notes that Act 1, Second
2 Special Session of 2007, amended the State's extended sentencing
3 statutes to ensure that the procedures used to impose extended
4 terms of imprisonment comply with the requirements of the United
5 States Supreme Court and the Hawaii supreme court. Among other
6 things, Act 1 required the prosecution to notify a defendant
7 within thirty days of the defendant's arraignment of its intent
8 to seek an extended term of imprisonment under section 706-662,
9 Hawaii Revised Statutes. The year after, the Hawaii supreme
10 court's decision in *State v. Jess*, 117 Hawaii 381, 184 P.3d 133
11 (2008) created a new requirement that "a charging instrument, be
12 it an indictment, complaint, or information, must include all
13 'allegations, which if proved, would result in the application
14 of a statute enhancing the penalty of the crime committed.'"
15 Under *Jess*, a defendant's eligibility for an extended term of
16 imprisonment is a penalty enhancer that must be alleged in the
17 charging instrument. The legislature finds that the co-



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1 existence of these two duplicative notice requirements has
2 created confusion in the circuit courts: in at least one
3 instance, a court interpreted section 706-664(2), Hawaii Revised
4 Statutes, as requiring notice separate from that already
5 provided in the charging instrument. In that case, the court
6 ultimately denied the prosecution a hearing on whether to impose
7 an extended term of imprisonment, because a separate notice of
8 intent was not given to the defendant within thirty days of the
9 defendant's arraignment. The legislature further finds that
10 government resources would be conserved by eliminating the need
11 for county prosecutor offices to provide notice of its intent to
12 seek an extended term of imprisonment twice in a single
13 prosecution.

14 The purpose of this Act is to maximize efficient use of
15 government resources while upholding the rights of criminal
16 defendants by specifying that a charging instrument containing
17 the applicable criteria under section 706-662, Hawaii Revised
18 Statutes, for an extended term of imprisonment is sufficient to
19 fulfill the notice requirement of section 706-664(2), Hawaii
20 Revised Statutes.



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1 SECTION 2. Section 706-664, Hawaii Revised Statutes, is
2 amended by amending subsection (2) to read as follows:

3 "(2) Notice of intention to seek an extended term of
4 imprisonment under section 706-662 shall be given to the
5 defendant within thirty days of the defendant's arraignment. A
6 charging instrument containing the applicable criteria under
7 section 706-662 for an extended term of imprisonment shall
8 constitute sufficient notice under this subsection. However,
9 the thirty-day period may be waived by the defendant, modified
10 by stipulation of the parties, or extended upon a showing of
11 good cause by the prosecutor. A defendant previously sentenced
12 to an extended term under a prior version of this chapter shall
13 be deemed to have received notice of an intention to seek an
14 extended term of imprisonment."

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

18 SECTION 4. New statutory material is underscored.

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

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INTRODUCED BY:

Guthrie Thiele
JAN 12 2018



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Report Title:

Penal Code; Sentencing; Imprisonment; Extended Term; Notice

Description:

Specifies that a charging instrument containing the applicable criteria under section 706-662, HRS, for an extended term of imprisonment is sufficient to fulfill the notice requirement of section 706-664(2), HRS.

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

