

JAN 27 2021

A BILL FOR AN ACT

RELATING TO CREDIT FOR TIME OF DETENTION PRIOR TO SENTENCE.

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

1 SECTION 1. The legislature, by Act 50, Session Laws of
2 Hawaii 2012, enacted subsection (3) of section 706-671, Hawaii
3 Revised Statutes, to prevent a defendant from earning credit for
4 time served for a subsequent crime while the defendant is
5 serving a sentence of imprisonment for a separate, unrelated
6 offense. The intent was to provide for uniform application of
7 section 706-671 and deter imprisoned offenders from incurring
8 new offenses.

9 In State v. Abihai, 146 Haw. 398, 463 P.3d 1055 (2020),
10 however, the supreme court of Hawaii held that the plain
11 language of section 706-671(1) required that the defendants the
12 legislature sought to address by enacting section 706-671(3)
13 still be given credit for the time spent in custody pending
14 trial. In Abihai, the supreme court found that the plain
15 language of section 706-671(3), which would have denied the
16 defendant's entitlement to presentence credit, does not
17 eliminate the defendant's entitlement to presentence detention
18 credit because the presentence detention credit time the

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1 defendant requested was not solely "time being served for the
2 separate unrelated felony conviction," but also time served for
3 the subsequent escape crime. In that case the defendant
4 committed escape in the second degree while serving a term of
5 imprisonment for a prior offense. Once apprehended, the
6 defendant was returned to custody to continue serving his term
7 of imprisonment and bail was set on his escape case. Although
8 the intent behind section 706-671(3) was to deny such defendants
9 credit for the time served for the subsequent offense while
10 defendants are serving a term of imprisonment for the prior
11 offense, the court held that under the plain language of section
12 706-671(3), defendant was still entitled to credit pursuant to
13 section 706-671(1) because the defendant was not serving time
14 solely for the prior separate unrelated offense but also for the
15 new subsequent escape offense.

16 The purpose of this Act is to clarify that defendants being
17 sentenced for offenses that were committed while serving a
18 sentence of imprisonment on a separate unrelated felony
19 conviction cannot be given credit for any time that was served
20 for the separate unrelated felony conviction, even if the
21 defendant was simultaneously being detained pending trial for
22 the offense committed while serving the sentence of imprisonment
23 for the separate unrelated felony conviction.

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1 SECTION 2. Section 706-671, Hawaii Revised Statutes, is
2 amended by amending subsection (3) to read as follows:

3 "(3) Notwithstanding subsection (1) and any other law to
4 the contrary, when a defendant is convicted for a crime
5 committed while serving a sentence of imprisonment on a separate
6 unrelated felony conviction, [~~credit for time being served for~~
7 ~~the term of imprisonment imposed on the defendant for the~~
8 ~~separate unrelated felony conviction shall not be deducted from~~
9 ~~the term of imprisonment imposed on the defendant for the~~
10 ~~subsequent conviction.~~] and the defendant was detained prior to
11 conviction for the subsequent offense while serving the term of
12 imprisonment for the separate unrelated felony conviction, the
13 defendant shall not get credit for the period of detention
14 served for the subsequent offense."

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 the effective date of this Act.

18 SECTION 4. Statutory material to be repealed is bracketed
19 and stricken. New statutory material is underscored.

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

21
22 INTRODUCED BY: 

23 BY REQUEST

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Report Title:

Penal Code; Sentencing; Credit for Time of Detention Prior to Sentence

Description:

Clarifies that defendants may not earn credit on a sentence imposed for a subsequent conviction for time being served on a previous felony conviction.

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

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JUSTIFICATION SHEET

DEPARTMENT: ATTORNEY GENERAL

TITLE: A BILL FOR AN ACT RELATING TO CREDIT FOR TIME OF DETENTION PRIOR TO SENTENCE

PURPOSE: To clarify that defendants who are convicted of crimes committed while serving a term of imprisonment cannot receive credit for any presentence time served for the new offense that overlaps with time being served for the old offense.

MEANS: Amend section 706-671(3), Hawaii Revised Statutes (HRS).

JUSTIFICATION: The Legislature intended "that a defendant will not earn credit for time served for a subsequent crime while the defendant is serving an imprisonment sentence for a separate, unrelated offense" when it added section 706-671(3), HRS, in 2012. See Senate Standing Committee Report No. 3188, Regular Session 2012. But in State v. Abihai, 146 Haw. 398, 463 P.3d 1055 (2020), the Hawaii Supreme Court found that the plain language of section 706-671(3), which would have denied the defendant's entitlement to presentence credit, does not eliminate the defendant's entitlement to presentence detention credit pursuant to section 706-671(1). The result was that defendant was given credit for the time that he had been detained pretrial, even though he was still serving a sentence of imprisonment for a separate unrelated felony offense.

This bill will clarify the wording in section 706-671(3) to conform to the legislative intent and ensure that a defendant will not receive presentence detention credit for a subsequent crime while serving a sentence for a prior separate unrelated offense.

Impact on the public: The public will benefit because the amendment will promote the legislative intent that was expressed when section 706-671(3) was first enacted. Enactment of this clarification of section 706-671(3) will serve to deter convicted criminals from committing crimes while incarcerated and ensure that the sentence of imprisonment for any such crimes committed will not be subsumed within or diminished by the sentence of imprisonment the defendant was already serving.

Impact on the department and other agencies: State v. Abihai, 146 Haw. 398, 463 P.3d 1055 (2020), was decided in April of 2020. Until that time, the department and other agencies, including the courts and the department of public safety, were denying credit for time served to defendants pursuant to section 706-671(3), HRS. The bill will allow all interested parties to apply section 706-671(3) as originally intended, and consistent with how it has been applied in the eight years prior to the decision in Abihai.

GENERAL FUND: None.

OTHER FUNDS: None.

PPBS PROGRAM DESIGNATION: None.

OTHER AFFECTED AGENCIES: Department of Public Safety.

EFFECTIVE DATE: Upon approval.