

Report Title:

Penal Code; Revision

Description:

Makes technical and substantive changes to Penal Code chapters 704, 706, 707, 708, 709, 710, 711, and 712. (HB3256 HD1)



A BILL FOR AN ACT

RELATING TO THE PENAL CODE.

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

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

4 "§706-A Sentencing for first-time property offenders;
5 expungement. (1) Notwithstanding section 706-620(3), a person
6 convicted for the first time of any class C felony property
7 offense under chapter 708 who has not previously been sentenced
8 under section 706-606.5, section 706-622.5, or this section is
9 eligible to be sentenced to probation under subsection (2) if
10 the person meets the following criteria:

11 (a) The court has determined that the person is nonviolent
12 after reviewing the person's criminal history, the
13 factual circumstances of the offense for which the
14 person is being sentenced, and any other relevant
15 information;

16 (b) The person has been assessed by a certified substance
17 abuse counselor to be in need of substance abuse
18 treatment due to dependency or abuse under the



1 applicable Diagnostic and Statistical Manual and
2 Addiction Severity Index;

3 (c) The court has determined that the offense for which
4 the person is being sentenced is related to the
5 person's substance abuse dependency or addiction;

6 (d) The court has determined that the person is genuinely
7 motivated to obtain and maintain substance abuse
8 treatment, based upon consideration of the person's
9 history, including whether substance abuse treatment
10 has previously been afforded to the person, and an
11 appraisal of the person's current circumstances and
12 attitude; and

13 (e) Except for those persons directed to substance abuse
14 treatment under the supervision of the drug court, the
15 person presents a proposal to receive substance abuse
16 treatment in accordance with the treatment plan
17 prepared by a certified substance abuse counselor
18 through a substance abuse treatment program that
19 includes an identified source of payment for the
20 treatment program.

21 (2) A person eligible under subsection (1) may be
22 sentenced to probation to undergo and complete a substance abuse



1 treatment program if the court determines that the person can
2 benefit from substance abuse treatment and, notwithstanding that
3 the person would be subject to sentencing as a repeat offender
4 under section 706-606.5, the person should not be incarcerated
5 to protect the public. If the person fails to complete the
6 substance abuse treatment program and the court determines that
7 the person cannot benefit from any other suitable substance
8 abuse treatment program, the person shall be sentenced as
9 provided in this part. As a condition of probation under this
10 subsection, the court may direct the person to undergo and
11 complete substance abuse treatment under the supervision of the
12 drug court if the person has a history or relapse in treatment
13 programs. The court may require other terms and conditions of
14 probation, including requiring that the person contribute to the
15 cost of the substance abuse treatment program and comply with
16 deadlines for entering into the substance abuse treatment
17 program.

18 (3) The court, upon written application from a person
19 sentenced under this part, shall issue a court order to expunge
20 the record of conviction for that particular offense; provided
21 that a person has successfully completed the substance abuse
22 treatment program and complied with other terms and conditions



1 of probation. A person sentenced to probation under this
2 section shall be eligible for expungement under this subsection
3 only if the person has not been previously convicted of a felony
4 offense in this or another jurisdiction.

5 (4) Nothing in this section shall be construed to give
6 rise to a cause of action against the State, a state employee,
7 or a treatment provider.

8 (5) For the purposes of this section, "substance abuse
9 treatment program" means drug or substance abuse treatment
10 services provided outside a correctional facility by a public,
11 private, or nonprofit entity that specializes in treating
12 persons who are diagnosed with having substance abuse or
13 dependency and preferably employs licensed professionals or
14 certified substance abuse counselors."

15 SECTION 2. Chapter 708, Hawaii Revised Statutes, is
16 amended by adding two new sections to be appropriately
17 designated and to read as follows:

18 "§708- _____ Burglary offenses; intent to commit therein a
19 crime against a person or against property rights. A person
20 engages in conduct "with intent to commit therein a crime
21 against a person or against property rights" if the person
22 formed the intent to commit within the building a crime against



1 a person or property rights before, during, or after unlawful
2 entry into the building.

3 §708- Unauthorized entry in a dwelling. (1) A person
4 commits the offense of unauthorized entry in a dwelling if the
5 person intentionally or knowingly enters unlawfully into a
6 dwelling with reckless disregard of the risk that another person
7 was lawfully present in the dwelling, and another person was
8 lawfully present in the dwelling.

9 (2) Unauthorized entry in a dwelling is a class C felony.

10 (3) It is an affirmative defense that reduces this offense
11 to a misdemeanor that at the time of the unlawful entry:

12 (a) There was a social gathering of invited guests at the
13 dwelling the defendant entered;

14 (b) The defendant intended to join the social gathering;
15 and

16 (c) The defendant had no intent to commit any unlawful act
17 other than the entry."

18 SECTION 3. Chapter 708, Hawaii Revised Statutes, is
19 amended by adding a new section to be appropriately designated
20 and to read as follows:

21 "§708- Unauthorized entry into motor vehicle in the
22 second degree. (1) A person commits the offense of



1 unauthorized entry into a motor vehicle in the second degree if
2 the person intentionally or knowingly enters into a motor
3 vehicle without being invited, licensed, or otherwise authorized
4 to do so.

5 (2) Unauthorized entry into a motor vehicle in the second
6 degree is a misdemeanor."

7 SECTION 4. Chapter 712, part IV, Hawaii Revised Statutes,
8 is amended by adding three new sections to be appropriately
9 designated and to read as follows:

10 **"§712-A Methamphetamine trafficking in the first degree.**

11 (1) A person commits the offense of methamphetamine trafficking
12 in the first degree if the person knowingly:

13 (a) Possesses one or more preparations, compounds,
14 mixtures, or substances of an aggregate weight of one
15 ounce or more containing methamphetamine or any of its
16 salts, isomers, and salts of isomers; or

17 (b) Distributes one or more preparations, compounds,
18 mixtures, or substances of an aggregate weight of one-
19 eighth ounce or more containing methamphetamine or any
20 of its salts, isomers, and salts of isomers; or

21 (c) Distributes methamphetamine in any amount to a minor;
22 or



1 (d) Manufactures methamphetamine in any amount.

2 (2) Methamphetamine trafficking in the first degree is a
3 class A felony for which the defendant shall be sentenced as
4 provided in subsection (3).

5 (3) Notwithstanding sections 706-620(2), 706-640, 706-641,
6 706-659, 706-669, and any other law to the contrary, a person
7 convicted of methamphetamine trafficking in the first degree
8 shall be sentenced to an indeterminate term of imprisonment of
9 twenty years with a mandatory minimum term of imprisonment of
10 not less than two years and not greater than eight years and a
11 fine not to exceed \$20,000,000; provided that:

12 (a) If the person has one prior conviction for
13 methamphetamine trafficking pursuant to this section
14 or section 712-B, the mandatory minimum term of
15 imprisonment shall be not less than six years, eight
16 months and not greater than thirteen years, four
17 months;

18 (b) If the person has two prior convictions for
19 methamphetamine trafficking pursuant to this section
20 or section 712-B, the mandatory minimum term of
21 imprisonment shall be not less than thirteen years,
22 four months and not greater than twenty years; or



1 (c) If the person has three or more prior convictions for
2 methamphetamine trafficking pursuant to this section
3 or section 712-B, the mandatory minimum term of
4 imprisonment shall be twenty years.

5 **§712-B Methamphetamine trafficking in the second degree.**

6 (1) A person commits the offense of methamphetamine trafficking
7 in the second degree if the person knowingly distributes
8 methamphetamine in any amount.

9 (2) Methamphetamine trafficking in the second degree is a
10 class B felony for which the defendant shall be sentenced as
11 provided in subsection (3).

12 (3) Notwithstanding sections 706-620, 706-640, 706-641,
13 706-660, 706-669, and any other law to the contrary, a person
14 convicted of methamphetamine trafficking in the second degree
15 shall be sentenced to an indeterminate term of imprisonment of
16 ten years with a mandatory minimum term of imprisonment of not
17 less than one year and not greater than four years and a fine
18 not to exceed \$10,000,000; provided that:

19 (a) If the person has one prior conviction for
20 methamphetamine trafficking pursuant to this section
21 or section 712-A, the mandatory minimum term of



1 imprisonment shall be not less than three years, four
2 months and not greater than six years, eight months;

3 (b) If the person has two prior convictions for
4 methamphetamine trafficking pursuant to this section
5 or section 712-A, the mandatory minimum term of
6 imprisonment shall be not less than six years, eight
7 months and not greater than ten years; or

8 (c) If the person has three or more prior convictions for
9 methamphetamine trafficking pursuant to this section
10 or section 712-A, the mandatory minimum term of
11 imprisonment shall be ten years.

12 **§712-C Methamphetamine trafficking; restitution and**
13 **reimbursement.** When sentencing a defendant convicted of
14 methamphetamine trafficking pursuant to section 712-A or 712-B,
15 the court may order restitution or reimbursement to the State or
16 appropriate county government for the cost incurred for any
17 cleanup associated with the manufacture or distribution of
18 methamphetamine and to any other person injured as a result of
19 the manufacture or distribution of methamphetamine."

20 SECTION 5. Section 704-401, Hawaii Revised Statutes, is
21 amended to read as follows:



1 "§704-401 Evidence of physical or mental disease,
2 disorder, or defect admissible when relevant to state of mind.
3 Evidence that the defendant [~~suffered from~~] was affected by a
4 physical or mental disease, disorder, or defect is admissible
5 whenever it is relevant to prove that the defendant did or did
6 not have a state of mind [~~which~~] that is required to establish
7 an element of the offense."

8 SECTION 6. Section 704-404, Hawaii Revised Statutes, is
9 amended as follows:

10 1. By amending subsections (1) to (4) to read:

11 "(1) Whenever the defendant has filed a notice of
12 intention to rely on the defense of physical or mental disease,
13 disorder, or defect excluding responsibility, or there is reason
14 to doubt the defendant's fitness to proceed, or reason to
15 believe that the physical or mental disease, disorder, or defect
16 of the defendant will or has become an issue in the case, the
17 court may immediately suspend all further proceedings in the
18 prosecution. If a trial jury has been empanelled, it shall be
19 discharged or retained at the discretion of the court. The
20 [~~dismissal~~] discharge of the trial jury shall not be a bar to
21 further prosecution.



1 (2) Upon suspension of further proceedings in the
2 prosecution, the court shall appoint three qualified examiners
3 in felony cases and one qualified examiner in nonfelony cases to
4 examine and report upon the physical and mental condition of the
5 defendant. In felony cases the court shall appoint at least one
6 psychiatrist and at least one licensed psychologist. The third
7 member may be [~~either~~] a psychiatrist, licensed psychologist, or
8 qualified physician. One of the three shall be a psychiatrist
9 or licensed psychologist designated by the director of health
10 from within the department of health. In nonfelony cases the
11 court may appoint either a psychiatrist or a licensed
12 psychologist. All examiners shall be appointed from a list of
13 certified examiners as determined by the department of health.
14 The court, in appropriate circumstances, may appoint an
15 additional examiner or examiners. The examination may be
16 conducted on an out-patient basis or, in the court's discretion,
17 when necessary the court may order the defendant to be committed
18 to a hospital or other suitable facility for the purpose of the
19 examination for a period not exceeding thirty days, or such
20 longer period as the court determines to be necessary for the
21 purpose. The court may direct that one or more qualified
22 physicians or psychologists retained by the defendant be



1 permitted to witness [~~and participate in~~] the examination. As
2 used in this section, the term "licensed psychologist" includes
3 psychologists exempted from licensure by section 465-3(a)(3).

4 (3) [~~In such examination any method may be employed which~~]
5 An examination performed under this section may employ any
6 method that is accepted by the professions of medicine or
7 psychology for the examination of those alleged to be [~~suffering~~
8 ~~from~~] affected by a physical or mental disease, disorder, or
9 defect; provided that each examiner shall form and render
10 diagnoses and opinions upon the physical and mental condition of
11 the defendant independently from the other examiners, and the
12 examiners [~~may~~], upon approval of the court, may secure the
13 services of clinical psychologists and other medical or
14 paramedical specialists to assist in the examination and
15 diagnosis.

16 (4) The report of the examination shall include the
17 following:

- 18 (a) A description of the nature of the examination;
19 (b) A diagnosis of the physical or mental condition of the
20 defendant;



- 1 (c) An opinion as to the defendant's capacity to
2 understand the proceedings against the defendant and
3 to assist in the defendant's own defense;
- 4 (d) An opinion as to the extent, if any, to which the
5 capacity of the defendant to appreciate the
6 wrongfulness of the defendant's conduct or to conform
7 the defendant's conduct to the requirements of law was
8 impaired at the time of the conduct alleged;
- 9 (e) When directed by the court, an opinion as to the
10 capacity of the defendant to have a particular state
11 of mind [~~which~~] that is required to establish an
12 element of the offense charged; and
- 13 (f) Where more than one examiner is appointed, a statement
14 that the diagnosis and opinion rendered were arrived
15 at independently of any other examiner, unless there
16 is a showing to the court of a clear need for
17 communication between or among the examiners for
18 clarification. A description of the communication
19 shall be included in the report. After all reports
20 are submitted to the court, examiners may confer
21 without restriction."
- 22 2. By amending subsection (6) to read:



1 "(6) [~~The~~] Three copies of the report of the examination,
2 including any supporting documents, shall be filed [~~in~~
3 ~~triplicate~~] with the clerk of the court, who shall cause copies
4 to be delivered to the prosecuting attorney and to counsel for
5 the defendant."

6 3. By amending subsection (8) to read:

7 (8) The court shall obtain all existing, medical, mental
8 health, social, police, and juvenile records, including those
9 expunged, and other pertinent records in the custody of public
10 agencies, notwithstanding any other statutes, and make such
11 records available for inspection by the examiners.'

12 SECTION 7. Section 704-406, Hawaii Revised Statutes, is
13 amended to read as follows:

14 "**§704-406 Effect of finding of unfitness to proceed.** (1)
15 If the court determines that the defendant lacks fitness to
16 proceed, the proceeding against the defendant shall be
17 suspended, except as provided in section 704-407, and the court
18 shall commit the defendant to the custody of the director of
19 health to be placed in an appropriate institution for detention,
20 care, and treatment. If the court is satisfied that the
21 defendant may be released on condition without danger to the
22 defendant or to the person or property of others, the court



1 shall order the defendant's release, which shall continue at the
2 discretion of the court[7] on conditions the court determines
3 necessary. A copy of the report filed pursuant to section 704-
4 404 shall be attached to the order of commitment or order of
5 [~~conditional~~] release[7] on conditions.

6 (2) When the court, on its own motion or upon the
7 application of the director of health, the prosecuting attorney,
8 or the defendant, determines, after a hearing if a hearing is
9 requested, that the defendant has regained fitness to proceed,
10 the penal proceeding shall be resumed. If, however, the court
11 is of the view that so much time has elapsed since the
12 commitment or [~~conditional~~] release on conditions of the
13 defendant that it would be unjust to resume the proceeding, the
14 court may dismiss the charge and [~~may order~~]:

- 15 (a) Order the defendant to be discharged [~~or, subject~~];
16 (b) Subject to the law governing the involuntary
17 [~~hospitalization or conditional release~~] civil
18 commitment of persons [~~suffering from~~] affected by
19 physical or mental disease, disorder, or defect, order
20 the defendant to be committed to the custody of the
21 director of health to be placed in an appropriate
22 institution for detention, care, and treatment; or



1 (c) Subject to the law governing involuntary outpatient
2 treatment, order the defendant to be released on
3 conditions the court determines necessary.

4 (3) Within a reasonable time following any commitment
5 under subsection (1), the director of health shall report to the
6 court on whether the defendant presents a substantial likelihood
7 of becoming fit to proceed in the future. The court, in
8 addition, may appoint a panel of three qualified examiners in
9 felony cases or one qualified examiner in nonfelony cases to
10 make a report. If, following a report, the court determines
11 that the defendant probably will remain unfit to proceed, the
12 court may dismiss the charge and ~~[release]~~:

13 (a) Release the defendant; or ~~[subject the defendant]~~

14 (b) Subject to the law governing involuntary civil
15 commitment [procedures-], order the defendant to be
16 committed to the custody of the director of health to
17 be placed in an appropriate institution for detention,
18 care, and treatment.

19 (4) Within a reasonable time following any ~~[conditional]~~
20 release under subsection (1), the court shall appoint a panel of
21 three qualified examiners in felony cases or one qualified
22 examiner in nonfelony cases to report to the court on whether



1 the defendant presents a substantial likelihood of becoming fit
2 to proceed in the future. If, following the report, the court
3 determines that the defendant probably will remain unfit to
4 proceed, the court may dismiss the charge and [~~release~~]:

5 (a) Release the defendant; or [~~subject the defendant~~]

6 (b) Subject to the law governing involuntary civil
7 commitment [~~procedures~~], order the defendant to be
8 committed to the custody of the director of health to
9 be placed in an appropriate institution for detention,
10 care, and treatment."

11 SECTION 8. Section 704-407, Hawaii Revised Statutes, is
12 amended to read as follows:

13 "**§704-407 Special [~~post-commitment or post-conditional~~**
14 **~~release,~~ hearing following commitment or release on conditions.**

15 (1) At any time after commitment as provided in section 704-
16 406, the defendant or the defendant's counsel or the director of
17 health may apply for a special post-commitment or post-release
18 hearing. If the application is made by or on behalf of a
19 defendant not represented by counsel, the defendant shall be
20 afforded a reasonable opportunity to obtain counsel, and if the
21 defendant lacks funds to do so, counsel shall be assigned by the
22 court. The application shall be granted only if the counsel for



1 the defendant satisfies the court by affidavit or otherwise
2 that, as an attorney, the counsel has reasonable grounds for a
3 good faith belief that the counsel's client has an objection
4 based upon legal grounds to the charge.

5 (2) If the motion for a special post-commitment or post-
6 release hearing is granted, the hearing shall be by the court
7 without a jury. No evidence shall be offered at the hearing by
8 either party on the issue of physical or mental disease,
9 disorder, or defect as a defense to, or in mitigation of, the
10 offense charged.

11 (3) After the hearing, the court shall rule on any legal
12 objection raised by the application and [~~may~~], in an appropriate
13 case, may quash the indictment or other charge, [~~or~~] find it to
14 be defective or insufficient, or otherwise terminate the
15 proceedings on the law. In any such case, unless all defects in
16 the proceedings are promptly cured, the court shall terminate
17 the commitment or [~~conditional~~] release ordered under section
18 704-406 and [~~order~~]:

- 19 (a) Order the defendant to be discharged {~~or, subject~~};
20 (b) Subject to the law governing [~~the~~] involuntary
21 [~~hospitalization or conditional release~~] civil
22 commitment of persons [~~suffering from~~] affected by a



1 physical or mental disease, disorder, or defect, order
2 the defendant to be committed to the custody of the
3 director of health to be placed in an appropriate
4 institution for detention, care, and treatment; or
5 (c) Subject to the law governing involuntary outpatient
6 treatment, order the defendant to be released on such
7 conditions as the court deems necessary."

8 SECTION 9. Section 704-408, Hawaii Revised Statutes, is
9 amended to read as follows:

10 "**§704-408 Determination of irresponsibility.** If the
11 report of the examiners filed pursuant to section 704-404, or
12 the report of examiners of the defendant's choice under section
13 704-409, states that the defendant at the time of the conduct
14 alleged [~~suffered from~~] was affected by a physical or mental
15 disease, disorder, or defect [~~which~~] that substantially impaired
16 the defendant's capacity to appreciate the wrongfulness of the
17 defendant's conduct or to conform the defendant's conduct to the
18 requirements of law, the court shall submit the defense of
19 physical or mental disease, disorder, or defect to the jury or
20 the trier of fact at the trial of the charge against the
21 defendant."



1 SECTION 10. Section 704-411, Hawaii Revised Statutes, is
2 amended to read as follows:

3 "§704-411 Legal effect of acquittal on the ground of
4 physical or mental disease, disorder, or defect excluding
5 responsibility; commitment; conditional release; discharge;
6 procedure for separate post-acquittal hearing. (1) When a
7 defendant is acquitted on the ground of physical or mental
8 disease, disorder, or defect excluding responsibility, the court
9 [~~shall~~], on the basis of the report made pursuant to section
10 704-404, if uncontested, or the medical or psychological
11 evidence given at the trial or at a separate hearing, shall make
12 an order as follows:

13 (a) The court shall order the defendant to be committed to
14 the custody of the director of health to be placed in
15 an appropriate institution for custody, care, and
16 treatment if the court finds that the defendant
17 [~~presents~~]:

18 (i) Is affected by a physical or mental disease,
19 disorder, or defect;

20 (ii) Presents a risk of danger to [~~oneself~~] self or
21 others [~~and that the defendant is~~]; and

22 (iii) Is not a proper subject for conditional release;



1 provided that the director of health shall place
2 defendants charged with misdemeanors or felonies not
3 involving violence or attempted violence in the least
4 restrictive environment appropriate in light of the
5 defendant's treatment needs and the need to prevent
6 harm to the person confined and others; [~~or~~]

7 (b) The court shall order the defendant to be released on
8 such conditions as the court deems necessary if the
9 court finds that the defendant is affected by physical
10 or mental disease, disorder, or defect and that the
11 defendant presents a danger to [~~oneself~~] self or
12 others, but that the defendant can be controlled
13 adequately and given proper care, supervision, and
14 treatment if the defendant is released on condition;
15 or

16 (c) The court shall order the defendant discharged [~~from~~
17 ~~custody~~] if the court finds that the defendant is no
18 longer affected by physical or mental disease,
19 disorder, or defect[~~or~~] or, if so affected, that the
20 defendant no longer presents a danger to [~~oneself~~]
21 self or others and is not in need of care,
22 supervision, or treatment.



1 (2) The court [~~shall~~], upon its own motion or on the
2 motion of the prosecuting attorney or the defendant, shall order
3 a separate post-acquittal hearing for the purpose of taking
4 evidence on the issue of physical or mental disease, disorder,
5 or defect and the risk of danger [~~which~~] that the defendant
6 presents to [~~oneself~~] self or others.

7 (3) When ordering a hearing pursuant to subsection (2):

8 (a) In nonfelony cases, the court shall appoint a
9 qualified examiner to examine and report upon the
10 physical and mental condition of the defendant. The
11 court may appoint either a psychiatrist or a licensed
12 psychologist. The examiner may be designated by the
13 director of health from within the department of
14 health. The examiner shall be appointed from a list
15 of certified examiners as determined by the department
16 of health. The court, in appropriate circumstances,
17 may appoint an additional examiner or examiners[~~-~~];
18 and

19 (b) In felony cases, the court shall appoint three
20 qualified examiners to examine and report upon the
21 physical and mental condition of the defendant. In
22 each case, the court shall appoint at least one



1 psychiatrist and at least one licensed psychologist.
2 The third member may be [~~either~~] a psychiatrist, a
3 licensed psychologist, or a qualified physician. One
4 of the three shall be a psychiatrist or licensed
5 psychologist designated by the director of health from
6 within the department of health. The three examiners
7 shall be appointed from a list of certified examiners
8 as determined by the department of health.

9 To facilitate the examination and the proceedings thereon, the
10 court may cause the defendant, if not then confined, to be
11 committed to a hospital or other suitable facility for the
12 purpose of examination for a period not exceeding thirty days or
13 such longer period as the court determines to be necessary for
14 the purpose upon written findings for good cause shown. The
15 court may direct that qualified physicians or psychologists
16 retained by the defendant be permitted to witness [~~and~~
17 ~~participate in~~] the examination. The examination and report and
18 the compensation of persons making or assisting in the
19 examination shall be in accord with section 704-404(3), (4)(a)
20 and (b), (6), (7), (8), and (9). As used in this section, the
21 term "licensed psychologist" includes psychologists exempted
22 from licensure by section 465-3(a)(3).



1 (4) Whether the court's order under subsection (1) is made
2 on the basis of the medical or psychological evidence given at
3 the trial, or on the basis of the report made pursuant to
4 section 704-404, or the medical or psychological evidence given
5 at a separate hearing, the burden shall be upon the State to
6 prove, by a preponderance of the evidence, that the defendant is
7 affected by a physical or mental disease, disorder, or defect
8 and may not safely be discharged and that the defendant should
9 be either committed or conditionally released as provided in
10 subsection (1).

11 (5) In any proceeding governed by this section, the
12 defendant's fitness shall not be an issue."

13 SECTION 11. Section 704-412, Hawaii Revised Statutes, is
14 amended to read as follows:

15 "**§704-412 Committed person; application for conditional**
16 **release or discharge; by the director of health; by the person.**

17 (1) After the expiration of at least ninety days following the
18 order of commitment pursuant to section 704-411, if the director
19 of health is of the opinion that the person committed to [~~his~~]
20 the director's custody is still affected by a physical or mental
21 disease, disorder, or defect and may be released on condition or
22 discharged without danger to [~~himself~~] self or to the person or



1 property of others~~[, he]~~ or that the person is no longer
2 affected by a physical or mental disease, disorder, or defect,
3 the director shall make application for the discharge or
4 conditional release of ~~[such]~~ the person in a report to the
5 court ~~[by]~~ from which ~~[such]~~ the person was committed and shall
6 transmit a copy of the application and report to the prosecuting
7 attorney of the county from which the ~~[defendant]~~ person was
8 committed. The ~~[defendant]~~ person shall be given notice of such
9 application.

10 (2) After the expiration of ninety days from the date of
11 the order of commitment pursuant to section 704-411, the person
12 committed may apply to the court ~~[by]~~ from which ~~[he]~~ the person
13 was committed for an order of discharge ~~[or conditional release]~~
14 upon the ground that the ~~[same may be ordered]~~ person is no
15 longer affected by a physical or mental disease, disorder, or
16 defect. The person committed may apply for discharge or
17 conditional release upon the ground that, though still affected
18 by a physical or mental disease, disorder, or defect, the person
19 may be released without danger to ~~[himself]~~ self or to the
20 person or property of others. A copy of the application shall
21 be transmitted to the prosecuting attorney of the county from
22 which the defendant was committed. If the determination of the



1 court is adverse to the application, [~~such~~] the person shall not
2 be permitted to file a further application until one year has
3 elapsed from the date of any preceding hearing on an application
4 for [~~his~~] the person's discharge or conditional release."

5 SECTION 12. Section 704-413, Hawaii Revised Statutes, is
6 amended to read as follows:

7 "**§704-413 Conditional release; application for**
8 **modification or discharge; termination of conditional release**
9 **and commitment.** (1) Any person released [~~on condition~~]
10 pursuant to section 704-411 shall continue to receive mental
11 health or other [~~appropriate~~] treatment and care deemed
12 appropriate by the director of health until discharged from
13 conditional release. The person shall follow all prescribed
14 treatments and take all prescribed medications according to the
15 instructions of the person's treating mental health
16 professional. If any mental health professional treating any
17 conditionally released person believes either the person is
18 [~~either~~] not complying with the requirements of this section[~~7~~]
19 or there is other evidence that hospitalization is appropriate,
20 the mental health professional shall report the matter to the
21 probation officer of the conditionally released person. The
22 probation officer may order the conditionally released person to



1 be hospitalized for a period not to exceed seventy-two hours if
2 the probation officer has probable cause to believe the person
3 has violated the requirements of this subsection. No person
4 shall be hospitalized beyond the seventy-two hour period, as
5 computed pursuant to section 1-29, unless a hearing has been
6 held pursuant to subsection (3).

7 (2) Any person released [~~on condition~~] pursuant to section
8 704-411 may apply to the court ordering the conditional release
9 for discharge from, or modification of, the order granting
10 conditional release on the ground that [~~he~~] the person is no
11 longer affected by a physical or mental disease, disorder, or
12 defect and may be discharged, or the order may be modified,
13 without danger to [~~himself~~] the person or to others. The
14 application shall be accompanied by a letter from or supporting
15 affidavit of a qualified physician or licensed psychologist. A
16 copy of the application and letter or affidavit shall be
17 transmitted to the prosecuting attorney of the [~~county in which~~
18 ~~the person is confined~~] circuit from which the order issued and
19 to any persons supervising [~~his~~] the release, and the hearing on
20 the application shall be held following notice to such persons.
21 If the determination of the court is adverse to the application,
22 [~~such~~] the person shall not be permitted to file further



1 application until one year has elapsed from the date of any
2 preceding hearing on an application for modification of
3 conditions of release or for discharge.

4 (3) If, at any time after the order pursuant to section
5 704-411 granting conditional release, the court [~~shall~~
6 ~~determine,~~] determines, after hearing evidence, that:

7 (a) The person is still affected by a physical or mental
8 disease, disorder, or defect, and the conditions of
9 release have not been fulfilled; or [~~that for~~]

10 (b) For the safety of [such] the person or others [his],
11 the person's conditional release should be revoked,
12 the court may forthwith modify the conditions of release or
13 order the person to be committed to the custody of the director
14 of health, subject to discharge or release only in accordance
15 with the procedure prescribed in section 704-412."

16 SECTION 13. Section 704-414, Hawaii Revised Statutes, is
17 amended to read as follows:

18 "**§704-414 Procedure upon application for discharge,**
19 **conditional release, or modification of conditions of release.**

20 Upon filing of an application pursuant to section 704-412 for
21 discharge or conditional release, or upon the filing of an
22 application pursuant to section 704-413 for discharge or for



1 modification of conditions of release, the court shall appoint
2 three qualified examiners in felony cases and one qualified
3 examiner in nonfelony cases to examine and report upon the
4 physical and mental condition of the defendant. In felony cases
5 the court shall appoint at least one psychiatrist and at least
6 one licensed psychologist. The third member may be [~~either~~] a
7 psychiatrist, a licensed psychologist, or a qualified physician.
8 One of the three shall be a psychiatrist or licensed
9 psychologist designated by the director of health from within
10 the department of health. The examiners shall be appointed from
11 a list of certified examiners as determined by the department of
12 health. To facilitate the examination and the proceedings
13 thereon, the court may cause the defendant, if not then
14 confined, to be committed to a hospital or other suitable
15 facility for the purpose of the examination and may direct that
16 qualified physicians or psychologists retained by the defendant
17 be permitted to witness [~~and participate in~~] the examination.
18 The examination and report and the compensation of persons
19 making or assisting in the examination shall be in accord with
20 section 704-404(3), (4)(a) and (b), (6), (7), (8), and (9). As
21 used in this section, the term "licensed psychologist" includes
22 psychologists exempted from licensure by section 465-3(a)(3)."



1 SECTION 14. Section 704-415, Hawaii Revised Statutes, is
2 amended to read as follows:

3 **"§704-415 Disposition of application for discharge,
4 conditional release, or modification of conditions of release.**

5 (1) If the court is satisfied [~~by~~] from the report filed
6 pursuant to section 704-414, and such testimony of the reporting
7 examiners as the court deems necessary, that:

8 (a) The person is affected by a physical or mental
9 disease, disorder, or defect and the discharge,
10 conditional release, or modification of conditions of
11 release applied for may be granted without danger to
12 the committed or conditionally released person or to
13 the person or property of others[~~7~~]; or

14 (b) The person is no longer affected by a physical or
15 mental disease, disorder, or defect,

16 the court shall grant the application and order the relief. If
17 the court is not so satisfied, it shall promptly order a hearing
18 [~~to determine whether such person may safely be discharged or~~
19 ~~released~~].

20 (2) Any such hearing shall be deemed a civil proceeding
21 and the burden shall be upon the applicant to prove that the
22 person is no longer affected by a physical or mental disease,



1 disorder, or defect or may safely be either released on the
2 conditions applied for or discharged. According to the
3 determination of the court upon the hearing, the person shall
4 [~~thereupon~~] be [~~discharged, or released~~]:

5 (a) Discharged;

6 (b) Released on such conditions as the court determines to
7 be necessary[~~]~~; or [~~shall be recommitted~~]

8 (c) Recommitted to the custody of the director of health,
9 subject to discharge or release only in accordance
10 with the procedure prescribed in section 704-412."

11 SECTION 15. Section 704-416.5, Hawaii Revised Statutes, is
12 amended to read as follows:

13 "[~~+~~]**§704-416.5**[~~+~~] **Supervision of person on conditional**
14 **release.** (1) Any person hospitalized under this chapter who is
15 subsequently placed on conditional release shall be subject to
16 the supervision of a probation officer until such time as that
17 supervision is terminated by order of the court.

18 (2) The probation officer shall report [~~from time to~~
19 ~~time~~], as the court may order, [~~as to~~] whether the conditionally
20 released person is complying with the conditions of the
21 release."



1 SECTION 16. Section 706-604, Hawaii Revised Statutes, is
2 amended as follows:

3 1. By amending subsection (2) to read:

4 "(2) The court shall furnish to the defendant or the
5 defendant's counsel and to the prosecuting attorney a copy of
6 the report of any pre-sentence diagnosis or psychological,
7 psychiatric, or other medical examination and afford fair
8 opportunity, if the defendant or the prosecuting attorney so
9 requests, to controvert or supplement them. The court shall
10 amend or order the amendment of the report upon finding that any
11 correction, modification, or addition is needed and, where
12 appropriate, shall require the prompt preparation of an amended
13 report in which material required to be deleted is completely
14 removed or other amendments, including additions, are made."

15 2. By amending subsection (4) to read:

16 (4) If the defendant is sentenced to imprisonment, a copy
17 of the report of any pre-sentence diagnosis or psychological,
18 psychiatric, or other medical examination, which shall
19 incorporate any amendments ordered by the court, shall be
20 transmitted immediately to the department of public safety [~~or,~~
21 ~~when the defendant is committed to the custody of a specific~~
22 ~~institution, to that institution]."~~



1 SECTION 17. Section 706-605, Hawaii Revised Statutes, is
2 amended to read as follows:

3 **"§706-605 Authorized disposition of convicted defendants.**

4 (1) Except as provided in parts II and IV [~~of this chapter~~] or
5 in section 706-647 and subsections (2), [~~and~~] (6), and (7) [~~of~~
6 ~~this section~~], and subject to the applicable provisions of this
7 Code, the court may sentence a convicted defendant to one or
8 more of the following dispositions:

9 (a) To be placed on probation as authorized by part II [~~of~~
10 ~~this chapter~~];

11 (b) To pay a fine as authorized by part III and section
12 706-624 [~~of this chapter~~];

13 (c) To be imprisoned for a term as authorized by part IV
14 [~~of this chapter~~]; or

15 [~~(d) To make restitution in an amount the defendant can~~
16 ~~afford to pay; provided that the court may order any~~
17 ~~restitution to be paid to victims pursuant to section~~
18 ~~706-646 or to the crime victim compensation special~~
19 ~~fund in the event that the victim has been given an~~
20 ~~award for compensation under chapter 351 and, if the~~
21 ~~court orders, in addition to restitution, payment of~~
22 ~~fine in accordance with paragraph (b), the payment of~~



1 ~~restitution and a compensation fee shall have priority~~
2 ~~over the payment of the fine; payment of restitution~~
3 ~~shall have priority over payment of a compensation~~
4 ~~fee; or~~

5 (e)] (d) To perform services for the community under the
6 supervision of a governmental agency or benevolent or
7 charitable organization or other community service
8 group or appropriate supervisor; provided that the
9 convicted person who performs such services shall not
10 be deemed to be an employee of the governmental agency
11 or assigned work site for any purpose. All persons
12 sentenced to perform community service shall be
13 screened and assessed for appropriate placement by a
14 governmental agency coordinating public service work
15 placement as a condition of sentence.

16 (2) The court shall not sentence a defendant to probation
17 and imprisonment except as authorized by part II [~~of this~~
18 ~~chapter~~].

19 (3) In addition to any disposition authorized in
20 subsection (1) [~~of this section~~], the court may sentence a
21 person convicted of a misdemeanor or petty misdemeanor to a
22 suspended sentence.



1 (4) The court may sentence a person who has been convicted
2 of a violation to any disposition authorized in subsection (1)
3 [~~of this section~~] except imprisonment.

4 (5) The court shall sentence a corporation or
5 unincorporated association [~~which~~] that has been convicted of an
6 offense in accordance with section 706-608.

7 (6) The court shall impose a compensation fee upon every
8 person convicted of a criminal offense pursuant to section
9 351-62.6; provided that the court shall waive the imposition of
10 a compensation fee if it finds that the defendant is unable to
11 pay the compensation fee. When a defendant is ordered to make
12 payments in addition to the compensation fee, payments by the
13 defendant shall be made in the following order of priority:

- 14 (a) Restitution;
- 15 (b) Crime victim compensation fee;
- 16 (c) Probation services fee;
- 17 (d) Other fees; and
- 18 (e) Fines.

19 (7) The court shall order the defendant to make
20 restitution for losses as provided in section 706-646. In
21 ordering restitution, the court shall not consider the
22 defendant's financial ability to make restitution in determining



1 the amount of restitution to order. The court, however, shall
2 consider the defendant's financial ability to make restitution
3 for the purpose of establishing the time and manner of payment.

4 [~~7~~] (8) This chapter does not deprive the court of any
5 authority conferred by law to decree a forfeiture of property,
6 suspend or cancel a license, remove a person from office, or
7 impose any other civil penalty. Such a judgment or order may be
8 included in the sentence."

9 SECTION 18. Section 706-622.5, Hawaii Revised Statutes, is
10 amended by amending subsection (1) to read as follows:

11 "(1) Notwithstanding section 706-620(3), a person
12 convicted for the first time for any offense under section 329-
13 43.5 involving the possession or use of drug paraphernalia or
14 any felony offense under part IV of chapter 712 involving the
15 possession or use~~[, not including to distribute or manufacture~~
16 ~~as defined in section 712-1240,~~] of any dangerous drug,
17 detrimental drug, harmful drug, intoxicating compound,
18 marijuana, or marijuana concentrate, as defined in section 712-
19 1240, [~~unlawful methamphetamine trafficking as provided in~~
20 ~~section 712-1240.6, or involving possession or use of drug~~
21 ~~paraphernalia under section 329-43.5,~~] but not including any
22 offense under part IV of chapter 712 involving the distribution



1 or manufacture of any such drugs or substances and not including
2 any methamphetamine trafficking offenses under sections 712-A
3 and 712-B, is eligible to be sentenced to probation under
4 subsection (2) if the person meets the following criteria:

5 (a) The court has determined that the person is nonviolent
6 after reviewing the person's criminal history, the
7 factual circumstances of the offense for which the
8 person is being sentenced, and any other relevant
9 information;

10 (b) The person has been assessed by a certified substance
11 abuse counselor to be in need of substance abuse
12 treatment due to dependency or abuse under the
13 applicable Diagnostic and Statistical Manual and
14 Addiction Severity Index; and

15 (c) Except for those persons directed to substance abuse
16 treatment under the supervision of the drug court, the
17 person presents a proposal to receive substance abuse
18 treatment in accordance with the treatment plan
19 prepared by a certified substance abuse counselor
20 through a substance abuse treatment program that
21 includes an identified source of payment for the
22 treatment program."



1 SECTION 19. Section 706-623, Hawaii Revised Statutes, is
2 amended by amending subsection (1) to read as follows:

3 "(1) When the court has sentenced a defendant to be placed
4 on probation, the period of probation shall be as follows,
5 unless the court enters the reason therefor on the record and
6 sentences the defendant to a shorter period of probation:

7 (a) Ten years upon conviction of a class A felony;

8 (b) Five years upon conviction of a class B or class C
9 felony;

10 (c) One year upon conviction of a misdemeanor; except that
11 upon a conviction under section 586-4, 586-11, or 709-
12 906, the court may sentence the defendant to a period
13 of probation not exceeding two years; or

14 (d) Six months upon conviction of a petty misdemeanor[-];
15 provided that up to one year may be imposed upon a
16 finding of good cause.

17 The court, on application of a probation officer, on application
18 of the defendant, or on its own motion, may discharge the
19 defendant at any time. Prior to granting early discharge, the
20 court shall afford the prosecuting attorney an opportunity to be
21 heard. The terms of probation provided in this part, other than



1 in this section, shall not apply to sentences of probation
2 imposed under section 706-606.3."

3 SECTION 20. Section 706-624, Hawaii Revised Statutes, is
4 amended to read as follows:

5 "**§706-624 Conditions of probation.** (1) Mandatory
6 conditions. The court shall provide, as an explicit condition
7 of a sentence of probation:

8 (a) That the defendant not commit another federal or state
9 crime or engage in criminal conduct in any foreign
10 jurisdiction or under military jurisdiction that would
11 constitute a crime under Hawaii law during the term of
12 probation;

13 (b) That the defendant report to a probation officer as
14 directed by the court or the probation officer;

15 (c) That the defendant remain within the jurisdiction of
16 the court, unless granted permission to leave by the
17 court or a probation officer;

18 (d) That the defendant notify a probation officer prior to
19 any change in address or employment;

20 (e) That the defendant notify a probation officer promptly
21 if arrested or questioned by a law enforcement
22 officer; [~~and~~]



1 (f) That the defendant permit a probation officer to visit
2 the defendant at the defendant's home or elsewhere as
3 specified by the court[-]; and

4 (g) That the defendant make restitution for losses
5 suffered by the victim or victims if the court has
6 ordered restitution pursuant to section 706-646.

7 (2) Discretionary conditions. The court may provide, as
8 further conditions of a sentence of probation, to the extent
9 that the conditions are reasonably related to the factors set
10 forth in section 706-606 and to the extent that the conditions
11 involve only deprivations of liberty or property as are
12 reasonably necessary for the purposes indicated in section 706-
13 606(2), that the defendant:

14 (a) Serve a term of imprisonment not exceeding [~~one year~~
15 ~~in felony cases, and not exceeding~~] two years in class
16 A felony cases under part IV of chapter 712, eighteen
17 months in class B felony cases, one year in class C
18 felony cases, six months in misdemeanor cases[+], and
19 five days in petty misdemeanor cases; provided that
20 notwithstanding any other provision of law, any order
21 of imprisonment under this subsection that provides
22 for prison work release shall require the defendant to



- 1 pay thirty per cent of the defendant's gross pay
2 earned during the prison work release period to
3 satisfy any restitution order. The payment shall be
4 handled by the adult probation division and shall be
5 paid to the victim on a monthly basis;
- 6 (b) Perform a specified number of hours of services to the
7 community as described in section [~~706-605(1)(e);~~]
8 706-605(1)(d);
- 9 (c) Support the defendant's dependents and meet other
10 family responsibilities;
- 11 (d) Pay a fine imposed pursuant to section 706-605(1)(b);
12 [~~(e) Make restitution as specified in section 706-~~
13 ~~605(1)(d);~~]
- 14 ~~(f)~~ (e) Work conscientiously at suitable employment or
15 pursue conscientiously a course of study or vocational
16 training that will equip the defendant for suitable
17 employment;
- 18 [~~(g)~~] (f) Refrain from engaging in a specified occupation,
19 business, or profession bearing a reasonably direct
20 relationship to the conduct constituting the crime or
21 engage in the specified occupation, business, or



1 profession only to a stated degree or under stated
2 circumstances;

3 ~~(h)~~ (g) Refrain from frequenting specified kinds of
4 places or from associating unnecessarily with
5 specified persons, including but not limited to the
6 victim of the crime, any witnesses, regardless of
7 whether they actually testified in the prosecution,
8 law enforcement officers, co-defendants, or other
9 individuals with whom contact may adversely affect the
10 rehabilitation or reformation of the person convicted;

11 ~~(i)~~ (h) Refrain from use of alcohol or any use of
12 narcotic drugs or controlled substances without a
13 prescription;

14 ~~(j)~~ (i) Refrain from possessing a firearm, ammunition,
15 destructive device, or other dangerous weapon;

16 ~~(k)~~ (j) Undergo available medical~~[, psychiatric, or~~
17 ~~psychological]~~ or mental health treatment, including
18 treatment for ~~[drug or alcohol]~~ substance abuse
19 dependency, and remain in a specified ~~[institution]~~
20 facility if required for that purpose;

21 ~~(l)~~ (k) Reside in a specified place or area or refrain
22 from residing in a specified place or area;



- 1 ~~[(m)]~~ (l) Submit to periodic urinalysis or other similar
2 testing procedure;
- 3 ~~[(n)] Satisfy other reasonable conditions as the court may~~
4 ~~impose;~~
- 5 ~~(o)]~~ (m) Refrain from entering specified geographical
6 areas without the court's permission; ~~[(e]~~
- 7 ~~(p)]~~ (n) Refrain from leaving the person's dwelling place
8 except to go to and from the person's place of
9 employment, the office of the person's physician or
10 dentist, the probation office, or ~~[as may be granted]~~
11 any other location as may be approved by the person's
12 probation officer pursuant to court order. As used in
13 this paragraph, "dwelling place" includes the person's
14 yard or, in the case of condominiums, the common
15 elements~~[-.]~~;
- 16 (o) Comply with a specified curfew;
- 17 (p) Submit to monitoring by an electronic monitoring
18 device; or
- 19 (q) Satisfy other reasonable conditions as the court may
20 impose.
- 21 (3) Written statement of conditions. The court shall
22 order the defendant at the time of sentencing to sign a written



1 acknowledgement of receipt of conditions of probation. The
2 defendant shall be given a written copy of any requirements
3 imposed pursuant to this section, stated with sufficient
4 specificity to enable the defendant to [~~guide the defendant's~~
5 ~~self~~] comply with the conditions accordingly."

6 SECTION 21. Section 706-643, Hawaii Revised Statutes, is
7 amended by amending subsection (1) to read as follows:

8 "(1) The defendant shall pay a fine or any installment
9 thereof to the cashier or clerk of the [~~sentencing~~] district or
10 circuit court. In the event of default in payment, the clerk
11 shall notify the prosecuting attorney and, if the defendant is
12 on probation, the probation officer."

13 SECTION 22. Section 706-646, Hawaii Revised Statutes, is
14 amended by amending subsections (2) and (3) to read as follows:

15 "(2) The court [~~may~~] shall order the defendant to make
16 restitution for reasonable and verified losses suffered by the
17 victim or victims as a result of the defendant's offense[~~-~~] when
18 requested by the victim. The court [~~may~~] shall order
19 restitution to be paid to the crime victim compensation
20 commission in the event that the victim has been given an award
21 for compensation under chapter 351. If the court orders payment
22 of a fine in addition to restitution or a compensation fee, or



1 both, the payment of restitution and compensation fee shall have
2 priority over the payment of the fine, and payment of
3 restitution shall have priority over payment of a compensation
4 fee.

5 (3) In ordering restitution, the court shall not consider
6 the defendant's financial ability to make restitution in
7 determining the amount of restitution to order. The court,
8 however, shall consider the defendant's financial ability to
9 make restitution for the purpose of establishing the time and
10 manner of payment. The court shall specify the time and manner
11 in which restitution is to be paid. Restitution shall be a
12 dollar amount that is sufficient to reimburse any victim fully
13 for losses including but not limited to:

14 (a) Full value of stolen or damaged property, as
15 determined by replacement costs of like property, or
16 the actual or estimated cost of repair, if repair is
17 possible;

18 (b) Medical expenses; and

19 (c) Funeral and burial expenses incurred as a result of
20 the crime."

21 SECTION 23. Section 706-661, Hawaii Revised Statutes, is
22 amended to read as follows:



1 "~~§706-661~~ [~~Sentence of imprisonment for felony, extended~~
2 Extended terms[-] of imprisonment. [~~In the cases designated in~~
3 ~~section 706-662,~~] The court may sentence a person who [~~has been~~
4 ~~convicted of a felony may be sentenced~~] satisfies the criteria
5 for any of the categories set forth in section 706-662 to an
6 extended [~~indeterminate~~] term of imprisonment[~~.—When ordering~~
7 ~~such a sentence, the court shall impose the maximum length of~~
8 ~~imprisonment which shall be as follows:~~], which shall have a
9 maximum length as follows:

- 10 (1) For murder in the second degree--life without the
11 possibility of parole;
- 12 (2) For a class A felony--indeterminate life term of
13 imprisonment;
- 14 (3) For a class B felony--indeterminate twenty-year term
15 of imprisonment; and
- 16 (4) For a class C felony--indeterminate ten-year term of
17 imprisonment.

18 In exercising its discretion on whether to impose the
19 extended term of imprisonment or to use other available
20 sentencing options, the court shall consider whether the
21 extended term is necessary for the protection of the public and



1 whether the extended term is necessary in light of the other
2 factors set forth in section 706-606.

3 When ordering an extended term sentence, the court shall
4 impose the maximum length of imprisonment. The minimum length
5 of imprisonment for an extended term sentence under
6 [+]paragraphs[+] (2), (3), and (4) shall be determined by the
7 Hawaii paroling authority in accordance with section 706-669."

8 SECTION 24. Section 706-662, Hawaii Revised Statutes, is
9 amended to read as follows:

10 "**§706-662 Criteria for extended terms of imprisonment.** A
11 ~~[convicted]~~ defendant ~~[may be subject to]~~ who has been convicted
12 of a felony qualifies for an extended term of imprisonment under
13 section 706-661~~[7]~~ if the convicted defendant satisfies one or
14 more of the following criteria:

15 (1) The defendant is a persistent offender ~~[whose~~
16 ~~imprisonment for an extended term is necessary for~~
17 ~~protection of the public. The court shall not make~~
18 ~~this finding unless]~~ in that the defendant has
19 previously been convicted of two felonies committed at
20 different times when the defendant was eighteen years
21 of age or older~~[7]~~;



1 (2) The defendant is a professional criminal [~~whose~~
2 ~~imprisonment for an extended term is necessary for~~
3 ~~protection of the public. The court shall not make~~
4 ~~this finding unless~~] in that:

5 (a) The circumstances of the crime show that the
6 defendant has knowingly engaged in criminal
7 activity as a major source of livelihood; or

8 (b) The defendant has substantial income or resources
9 not explained to be derived from a source other
10 than criminal activity[~~-~~];

11 (3) The defendant is a dangerous person [~~whose~~
12 ~~imprisonment for an extended term is necessary for~~
13 ~~protection of the public. The court shall not make~~
14 ~~this finding unless~~] in that the defendant has been
15 subjected to a psychiatric or psychological evaluation
16 that documents a significant history of dangerousness
17 to others resulting in criminally violent conduct, and
18 this history makes the defendant a serious danger to
19 others. Nothing in this section precludes the
20 introduction of victim-related data in order to
21 establish dangerousness in accord with the Hawaii
22 rules of evidence[~~-~~];



1 (4) The defendant is a multiple offender [~~whose criminal~~
2 ~~actions were so extensive that a sentence of~~
3 ~~imprisonment for an extended term is necessary for~~
4 ~~protection of the public. The court shall not make~~
5 ~~this finding unless:~~] in that:

6 (a) The defendant is being sentenced for two or more
7 felonies or is already under sentence of
8 imprisonment for felony; or

9 (b) The maximum terms of imprisonment authorized for
10 each of the defendant's crimes, if made to run
11 consecutively, would equal or exceed in length
12 the maximum of the extended term imposed or would
13 equal or exceed forty years if the extended term
14 imposed is for a class A felony[-];

15 (5) The defendant is an offender against the elderly,
16 handicapped, or a minor under the age of eight, [~~whose~~
17 ~~imprisonment for an extended term is necessary for the~~
18 ~~protection of the public. The court shall not make~~
19 ~~this finding unless:~~] in that:

20 (a) The defendant attempts or commits any of the
21 following crimes: murder, manslaughter, a sexual
22 offense that constitutes a felony under chapter



- 1 707, robbery, felonious assault, burglary, or
2 kidnapping; and
- 3 (b) The defendant, in the course of committing or
4 attempting to commit the crime, inflicts serious
5 or substantial bodily injury upon a person who
6 is:
- 7 (i) Sixty years of age or older;
- 8 (ii) Blind, a paraplegic, or a quadriplegic; or
- 9 (iii) Eight years of age or younger; and
- 10 (c) Such disability is known or reasonably should be
11 known to the defendant[-]; or
- 12 (6) The defendant is a hate crime offender [~~whose~~
13 ~~imprisonment for an extended term is necessary for the~~
14 ~~protection of the public. The court shall not make~~
15 ~~this finding unless:~~] in that:
- 16 (a) The defendant is convicted of a crime under
17 chapter 707, 708, or 711; and
- 18 (b) The defendant intentionally selected a victim[7]
19 or, in the case of a property crime, the property
20 that was the object of a crime, because of
21 hostility toward the actual or perceived race,
22 religion, disability, ethnicity, national origin,



1 gender identity or expression, or sexual
2 orientation of any person. For purposes of this
3 subsection, "gender identity or expression"
4 includes a person's actual or perceived gender,
5 as well as a person's gender identity, gender-
6 related self-image, gender-related appearance, or
7 gender-related expression[+], regardless of
8 whether that gender identity, gender-related
9 self-image, gender-related appearance, or gender-
10 related expression is different from that
11 traditionally associated with the person's sex at
12 birth."

13 SECTION 25. Section 706-667, Hawaii Revised Statutes, is
14 amended to read as follows:

15 "**§706-667 Young adult defendants.** (1) Defined. A young
16 adult defendant is a person convicted of a crime who, at the
17 time of [~~sentencing,~~] the offense, is less than twenty-two years
18 of age and who has not been previously convicted of a felony as
19 an adult or adjudicated as a juvenile for an offense that would
20 have constituted a felony had the young adult defendant been an
21 adult.



1 (2) Specialized correctional treatment. A young adult
2 defendant who is sentenced to a term of imprisonment [~~which may~~
3 ~~exceed~~] exceeding thirty days may be committed by the court to
4 the custody of the department of public safety[~~7~~] and shall
5 receive, as far as practicable, such special and individualized
6 correctional and rehabilitative treatment as may be appropriate
7 to the young adult defendant's needs.

8 (3) Special term. A young adult defendant convicted of a
9 felony [~~may~~], in lieu of any other sentence of imprisonment
10 authorized by this chapter, may be sentenced to a special
11 indeterminate term of imprisonment if the court is of the
12 opinion that such special term is adequate for the young adult
13 defendant's correction and rehabilitation and will not
14 jeopardize the protection of the public. When ordering a
15 special indeterminate term of imprisonment, the court shall
16 impose the maximum length of imprisonment, which shall be eight
17 years for a class A felony, five years for a class B felony, and
18 four years for a class C felony. The minimum length of
19 imprisonment shall be set by the Hawaii paroling authority in
20 accordance with section 706-669. During this special
21 indeterminate term, the young adult [~~will~~] shall be incarcerated
22 separately from career criminals, when practicable.



1 This section shall not apply to the offenses of murder or
2 attempted murder."

3 SECTION 26. Section 707-700, Hawaii Revised Statutes, is
4 amended by amending the definition of "mentally incapacitated"
5 and "sexual penetration" to read:

6 ""Mentally incapacitated" means a person rendered
7 temporarily incapable of appraising or controlling the person's
8 conduct [~~owing to~~] as a result of the influence of a substance
9 administered to the person without the person's consent.

10 "Sexual penetration" means:

11 (1) Vaginal intercourse, anal intercourse, fellatio,
12 deviate sexual intercourse, or any intrusion of any
13 part of a person's body or of any object into the
14 genital or anal opening of another person's body; it
15 occurs upon any penetration, however slight, but
16 emission is not required[?]. As used in this
17 definition, "genital opening" includes the anterior
18 surface of the vulva or labia majora; or

19 (2) Cunnilingus or anilingus, whether or not actual
20 penetration has occurred.

21 For purposes of this chapter, each act of sexual penetration
22 shall constitute a separate offense."



1 SECTION 27. Section 707-701, Hawaii Revised Statutes, is
2 amended by amending subsection (1) to read as follows:

3 "(1) A person commits the offense of murder in the first
4 degree if the person intentionally or knowingly causes the death
5 of:

6 (a) More than one person in the same or separate incident;

7 (b) A law enforcement officer, judge, or prosecutor
8 arising out of the performance of official duties;

9 (c) A person known by the defendant to be a witness in a
10 criminal prosecution[+] and the killing is related to
11 the person's status as a witness;

12 (d) A person by a hired killer, in which event both the
13 person hired and the person responsible for hiring the
14 killer shall be punished under this section; or

15 (e) A person while the defendant was imprisoned."

16 SECTION 28. Section 707-702, Hawaii Revised Statutes, is
17 amended by amending subsection (1) to read as follows:

18 "(1) A person commits the offense of manslaughter if:

19 (a) [~~He~~] The person recklessly causes the death of another
20 person; or

21 (b) [~~He~~] The person intentionally causes another person to
22 commit suicide."



1 SECTION 29. Section 707-711, Hawaii Revised Statutes, is
2 amended by amending subsection (1) to read as follows:

3 "(1) A person commits the offense of assault in the second
4 degree if:

5 (a) The person intentionally or knowingly causes
6 substantial bodily injury to another;

7 (b) The person recklessly causes serious or substantial
8 bodily injury to another person;

9 (c) The person intentionally or knowingly causes bodily
10 injury to a correctional worker, as defined in section
11 710-1031(2), who is engaged in the performance of duty
12 or who is within a correctional facility;

13 (d) The person intentionally or knowingly causes bodily
14 injury to another person with a dangerous instrument;
15 or

16 (e) The person intentionally or knowingly causes bodily
17 injury to an educational worker who is engaged in the
18 performance of duty or who is within an educational
19 facility. For the purposes of this [~~section,~~
20 paragraph, "educational worker" means: any
21 administrator, specialist, counselor, teacher, or
22 employee of the department of education[~~, or~~]; a



1 person who is a volunteer in a school program,
2 activity, or function that is established, sanctioned,
3 or approved by the department of education; or a
4 person hired by the department of education on a
5 contractual basis and engaged in carrying out an
6 educational function."

7 SECTION 30. Section 707-714, Hawaii Revised Statutes, is
8 amended to read as follows:

9 "**§707-714 Reckless endangering in the second degree.** (1)

10 A person commits the offense of reckless endangering in the
11 second degree if the person [engages]:

12 (a) Engages in conduct ~~[which]~~ that recklessly places
13 another person in danger of death or serious bodily
14 injury~~[-]~~; or

15 ~~[(2) For the purposes of this section and in addition to~~
16 ~~other applications, a person engages in conduct which recklessly~~
17 ~~places another person in danger of death or serious bodily~~
18 ~~injury when that person intentionally]~~

19 (b) Intentionally discharges a firearm in a populated
20 area, in a residential area, or within the boundaries
21 or in the direction of any road, street, or highway;
22 provided that the provisions of this paragraph shall



1 not apply to any person who discharges a firearm upon
2 a target range for the purpose of the target shooting
3 done in compliance with all laws and regulations
4 applicable thereto.

5 [~~3~~] (2) Reckless endangering in the second degree is a
6 misdemeanor."

7 SECTION 31. Section 707-716, Hawaii Revised Statutes, is
8 amended by amending subsection (1) to read as follows:

9 "(1) A person commits the offense of terroristic
10 threatening in the first degree if the person commits
11 terroristic threatening:

- 12 (a) By threatening another person on more than one
13 occasion for the same or a similar purpose; [~~or~~]
- 14 (b) By threats made in a common scheme against different
15 persons; [~~or~~]
- 16 (c) Against a public servant[~~, including~~] arising out of
17 the performance of the public servant's official
18 duties. For the purposes of this paragraph, "public
19 servant" includes but is not limited to an educational
20 worker[~~, who for the purposes of this section shall~~
21 mean an administrator, specialist, counselor, teacher,
22 or other employee of the department of education, or a



1 ~~volunteer as defined by section 90-1, in a school~~
2 ~~program, activity, or function that is established,~~
3 ~~sanctioned, or approved by the department of~~
4 ~~education, or a person hired by the department of~~
5 ~~education on a contractual basis and engaged in~~
6 ~~carrying out an educational function; or].~~

7 "Educational worker" has the same meaning as defined
8 in section 707-711; or

9 (d) With the use of a dangerous instrument."

10 SECTION 32. Section 707-730, Hawaii Revised Statutes, is
11 amended by amending subsection (1) to read as follows:

12 "(1) A person commits the offense of sexual assault in the
13 first degree if:

14 (a) The person knowingly subjects another person to an act
15 of sexual penetration by strong compulsion;

16 (b) The person knowingly engages in sexual penetration
17 with another person who is less than fourteen years
18 old; [~~or~~]

19 (c) The person knowingly engages in sexual penetration
20 with a person who is at least fourteen years old but
21 less than sixteen years old; provided that:



1 (i) The person is not less than five years older than
2 the minor; and

3 (ii) The person is not legally married to the
4 minor[-];

5 (d) The person knowingly subjects to sexual penetration
6 another person who is mentally defective; or

7 (e) The person knowingly subjects to sexual penetration
8 another person who is mentally incapacitated or
9 physically helpless as a result of the influence of a
10 substance that the actor knowingly caused to be
11 administered to the other person without the other
12 person's consent.

13 Paragraphs (b) and (c) shall not be construed to prohibit
14 practitioners licensed under chapter 453, 455, or 460, from
15 performing any act within their respective practices."

16 SECTION 33. Section 707-731, Hawaii Revised Statutes, is
17 amended by amending subsection (1) to read as follows:

18 "(1) A person commits the offense of sexual assault in the
19 second degree if:

20 (a) The person knowingly subjects another person to an act
21 of sexual penetration by compulsion;



- 1 (b) The person knowingly subjects to sexual penetration
2 another person who is [~~mentally defective,~~] mentally
3 incapacitated[~~7~~] or physically helpless; or
- 4 (c) The person, while employed:
- 5 (i) In a state correctional facility;
- 6 (ii) By a private company providing services at a
7 correctional facility;
- 8 (iii) By a private company providing community-based
9 residential services to persons committed to the
10 director of public safety and having received
11 notice of this statute;
- 12 (iv) By a private correctional facility operating in
13 the State of Hawaii; or
- 14 (v) As a law enforcement officer as defined in
15 section 710-1000(13),
16 knowingly subjects to sexual penetration an imprisoned
17 person, a person confined to a detention facility, a
18 person committed to the director of public safety, a
19 person residing in a private correctional facility
20 operating in the State of Hawaii, or a person in
21 custody; provided that paragraph (b) and this
22 paragraph shall not be construed to prohibit



1 practitioners licensed under chapter 453, 455, or 460,
2 from performing any act within their respective
3 practices; and further provided that this paragraph
4 shall not be construed to prohibit a law enforcement
5 officer from performing a lawful search pursuant to a
6 warrant or exception to the warrant clause."

7 SECTION 34. Section 708-801, Hawaii Revised Statutes, is
8 amended to read as follows:

9 "**§708-801 Valuation of property~~[-]~~ or services.** Whenever
10 the value of property or services is determinative of the class
11 or grade of an offense, or otherwise relevant to a prosecution,
12 the following shall apply:

13 (1) Except as otherwise specified in this section, value
14 means the market value of the property or services at
15 the time and place of the offense, or the replacement
16 cost [if] the market value of the property or
17 services cannot be determined.

18 (2) Whether or not they have been issued or delivered,
19 certain written instruments, not including those
20 having a readily ascertained market value, shall be
21 evaluated as follows:



1 (a) The value of an instrument constituting an
2 evidence of debt, such as a check, traveler's
3 check, draft, or promissory note, shall be deemed
4 the amount due or collectible thereon or thereby,
5 that figure ordinarily being the face amount of
6 the indebtedness less any portion thereof [~~which~~]
7 that has been satisfied;

8 (b) The value of any other instrument that creates,
9 releases, discharges, or otherwise affects any
10 valuable legal right, privilege, or obligation
11 shall be deemed the greatest amount of economic
12 loss [~~which~~] that the owner of the instrument
13 might reasonably suffer by virtue of the loss of
14 the instrument.

15 (3) When property [~~has~~] or services have value but that
16 value cannot be ascertained pursuant to the standards
17 set forth above, the value shall be deemed to be an
18 amount not exceeding \$100.

19 (4) When acting intentionally or knowingly with respect to
20 the value of property or services is required to
21 establish an element of an offense, the value of
22 property or services shall be prima facie evidence



1 that the defendant believed or knew the property or
2 services to be of that value. When acting recklessly
3 with respect to the value of property or services is
4 sufficient to establish an element of an offense, the
5 value of the property or services shall be prima facie
6 evidence that the defendant acted in reckless
7 disregard of the value.

8 (5) When acting intentionally or knowingly with respect to
9 the value of property or services is required to
10 establish an element of an offense, it is a defense,
11 which reduces the class or grade of the offense to a
12 class or grade of offense consistent with the
13 defendant's state of mind, that the defendant believed
14 the valuation of the property or services to be less.
15 When acting recklessly with respect to the value of
16 property or services is required to establish an
17 element of an offense, it is a defense that the
18 defendant did not recklessly disregard a risk that the
19 property was of the specified value.

20 (6) Amounts involved in thefts committed pursuant to one
21 scheme or course of conduct, whether the property
22 taken be of one person or several persons, may be



1 aggregated in determining the class or grade of the
2 offense. Amounts involved in offenses of criminal
3 property damage committed pursuant to one scheme or
4 course of conduct, whether the property damaged be of
5 one person or several persons, may be aggregated in
6 determining the class or grade of the offense."

7 SECTION 35. Section 708-822, Hawaii Revised Statutes, is
8 amended by amending subsection (1) to read as follows:

9 "(1) A person commits the offense of criminal property
10 damage in the third degree if:

11 (a) The person recklessly damages the property of another,
12 without the other's consent, by the use of widely
13 dangerous means; or

14 (b) The person intentionally or knowingly damages the
15 property of another, without the other's consent, in
16 an amount exceeding \$500."

17 SECTION 36. Section 708-823, Hawaii Revised Statutes, is
18 amended by amending subsection (1) to read as follows:

19 "(1) A person commits the offense of criminal property
20 damage in the fourth degree if the person intentionally or
21 knowingly damages the property of another without the other's
22 consent."



1 SECTION 37. Section 708-830, Hawaii Revised Statutes, is
2 amended to read as follows:

3 "§708-830 **Theft.** A person commits theft if the person
4 does any of the following:

5 (1) Obtains or exerts unauthorized control over property.

6 A person obtains[~~7~~] or exerts unauthorized control
7 over[~~7~~] the property of another with intent to deprive
8 the other of the property.

9 (2) Property obtained or control exerted through
10 deception. A person obtains, or exerts control over,
11 the property of another by deception with intent to
12 deprive the other of the property.

13 (3) Appropriation of property. A person obtains, or
14 exerts control over, the property of another that the
15 person knows to have been lost or mislaid or to have
16 been delivered under a mistake as to the nature or
17 amount of the property, the identity of the recipient,
18 or other facts, and, with the intent to deprive the
19 owner of the property, the person fails to take
20 reasonable measures to discover and notify the owner.

21 (4) Obtaining services by deception. A person
22 intentionally obtains services, known by the person to



1 be available only for compensation, by deception,
2 false token, or other means to avoid payment for the
3 services. When compensation for services is
4 ordinarily paid immediately upon the rendering of
5 them, absconding without payment or offer to pay is
6 prima facie evidence that the services were obtained
7 by deception.

8 (5) Diversion of services. Having control over the
9 disposition of services of another to which a person
10 is not entitled, the person intentionally diverts
11 those services to the person's own benefit or to the
12 benefit of a person not entitled thereto.

13 (6) Failure to make required disposition of funds.

14 (a) A person intentionally obtains property from
15 anyone upon an agreement, or subject to a known
16 legal obligation, to make specified payment or
17 other disposition, whether from the property or
18 its proceeds or from the person's own property
19 reserved in equivalent amount, and deals with the
20 property as the person's own and fails to make
21 the required payment or disposition. It does not
22 matter that it is impossible to identify



1 particular property as belonging to the victim at
2 the time of the defendant's failure to make the
3 required payment or disposition. A person's
4 status as an officer or employee of the
5 government or a financial institution is prima
6 facie evidence that the person knows the person's
7 legal obligations with respect to making payments
8 and other dispositions. If the officer or
9 employee fails to pay or account upon lawful
10 demand, or if an audit reveals a falsification of
11 accounts, it shall be prima facie evidence that
12 the officer or employee has intentionally dealt
13 with the property as the officer's or employee's
14 own.

15 (b) A person obtains personal services from an
16 employee upon agreement or subject to a known
17 legal obligation to make a payment or other
18 disposition of funds to a third person on account
19 of the employment, and the person intentionally
20 fails to make the payment or disposition at the
21 proper time.



1 (7) Receiving stolen property. A person intentionally
2 receives, retains, or disposes of the property of
3 another, knowing that it has been stolen, with intent
4 to deprive the owner of the property. It is prima
5 facie evidence that a person knows the property to
6 have been stolen if, being a dealer in property of the
7 sort received, the person acquires the property for a
8 consideration that the person knows is far below its
9 reasonable value.

10 (8) Shoplifting.

11 (a) A person conceals or takes possession of the
12 goods or merchandise of any store or retail
13 establishment, with intent to defraud.

14 (b) A person alters the price tag or other price
15 marking on goods or merchandise of any store or
16 retail establishment, with intent to defraud.

17 (c) A person transfers the goods or merchandise of
18 any store or retail establishment from one
19 container to another, with intent to defraud.

20 The unaltered price or name tag or other marking on
21 goods or merchandise, duly identified photographs or
22 photocopies thereof, or printed register receipts[7]



1 shall be prima facie evidence of value and ownership
2 of such goods or merchandise. Photographs of the
3 goods or merchandise involved, duly identified in
4 writing by the arresting police officer as accurately
5 representing such goods or merchandise, shall be
6 deemed competent evidence of the goods or merchandise
7 involved and shall be admissible in any proceedings,
8 hearings, and trials for shoplifting[~~7~~] to the same
9 extent as the goods or merchandise themselves."

10 SECTION 38. Section 708-832, Hawaii Revised Statutes, is
11 amended by amending subsection (1) to read as follows:

12 "(1) A person commits the offense of theft in the third
13 degree if the person commits theft:

14 (a) Of property or services the value of which exceeds
15 \$100; or

16 (b) Of gasoline, diesel fuel, or other related petroleum
17 products used as propellants of any value not
18 exceeding [~~\$200.~~] \$300."

19 SECTION 39. Section 708-835.5, Hawaii Revised Statutes, is
20 amended by amending subsection (1) to read as follows:

21 "(1) A person commits the offense of theft of livestock if
22 the person commits theft by [~~having~~]:



- 1 (a) Having in the person's possession a live animal of the
2 bovine, equine, swine, [~~or~~] sheep, or goat species, or
3 its carcass or meat, while in or upon premises [~~which~~]
4 that the person knowingly entered or remained
5 unlawfully in or upon, and [~~which~~] that are fenced or
6 enclosed in a manner designed to exclude intruders[~~;~~];
7 or [~~by having~~]
- 8 (b) Having in the person's possession a live animal,
9 carcass, or meat in any other location."

10 SECTION 40. Section 708-836.5, Hawaii Revised Statutes, is
11 amended to read as follows:

12 "[~~+~~]**§708-836.5**[~~+~~] **Unauthorized entry into motor vehicle**[~~;~~]
13 **in the first degree.** (1) A person commits the offense of
14 unauthorized entry into motor vehicle in the first degree if the
15 person intentionally or knowingly enters or remains unlawfully
16 in a motor vehicle, without being invited, licensed, or
17 otherwise authorized to enter or remain within the vehicle, with
18 the intent to commit a crime against a person or against
19 property rights.

20 (2) Unauthorized entry into motor vehicle in the first
21 degree is a class C felony."



1 SECTION 41. Section 708-840, Hawaii Revised Statutes, is
2 amended by amending subsection (1) to read as follows:

3 "(1) A person commits the offense of robbery in the first
4 degree if, in the course of committing theft[+] or non-
5 consensual taking of a motor vehicle:

6 (a) The person attempts to kill another[7] or
7 intentionally or knowingly inflicts or attempts to
8 inflict serious bodily injury upon another; or

9 (b) The person is armed with a dangerous instrument and:

10 (i) The person uses force against the person of
11 anyone present with intent to overcome that
12 person's physical resistance or physical power of
13 resistance; or

14 (ii) The person threatens the imminent use of force
15 against the person of anyone who is present with
16 intent to compel acquiescence to the taking of or
17 escaping with the property."

18 SECTION 42. Section 708-841, Hawaii Revised Statutes, is
19 amended by amending subsection (1) to read as follows:

20 "(1) A person commits the offense of robbery in the second
21 degree if, in the course of committing theft[+] or non-
22 consensual taking of a motor vehicle:



- 1 (a) The person uses force against the person of anyone
2 present with the intent to overcome that person's
3 physical resistance or physical power of resistance;
- 4 (b) The person threatens the imminent use of force against
5 the person of anyone who is present with intent to
6 compel acquiescence to the taking of or escaping with
7 the property; or
- 8 (c) The person recklessly inflicts serious bodily injury
9 upon another."

10 SECTION 43. Section 708-842, Hawaii Revised Statutes, is
11 amended to read as follows:

12 **"§708-842 Robbery; "in the course of committing a theft."**

13 An act shall be deemed "in the course of committing a theft or
14 non-consensual taking of a motor vehicle" if it occurs in an
15 attempt to commit theft[7] or non-consensual taking of a motor
16 vehicle, in the commission of theft[7] or non-consensual taking
17 of a motor vehicle, or in the flight after the attempt or
18 commission."

19 SECTION 44. Section 708-8100, Hawaii Revised Statutes, is
20 amended by amending subsection (2) to read as follows:

21 "(2) Fraudulent use of a credit card is a class C felony
22 if the value of all money, goods, services, and other things of



1 value obtained or attempted to be obtained exceeds \$300 in any
2 six-month period. For purposes of this section, each separate
3 use of a credit card that exceeds \$300 constitutes a separate
4 offense."

5 SECTION 45. Section 709-904, Hawaii Revised Statutes, is
6 amended by amending subsection (3) to read as follows:

7 "(3) Endangering the welfare of a minor in the second
8 degree is a misdemeanor."

9 SECTION 46. Section 709-906, Hawaii Revised Statutes, is
10 amended to read as follows:

11 "**§709-906 Abuse of family or household members; penalty.**

12 (1) It shall be unlawful for any person, singly or in concert,
13 to physically abuse a family or household member or to refuse
14 compliance with the lawful order of a police officer under
15 subsection (4). The police, in investigating any complaint of
16 abuse of a family or household member, upon request, may
17 transport the abused person to a hospital or safe shelter.

18 For the purposes of this section, "family or household
19 member" means spouses or reciprocal beneficiaries, former
20 spouses or reciprocal beneficiaries, persons who have a child in
21 common, parents, children, persons related by consanguinity, and



1 persons jointly residing or formerly residing in the same
2 dwelling unit.

3 (2) Any police officer, with or without a warrant, may
4 arrest a person if the officer has reasonable grounds to believe
5 that the person is physically abusing, or has physically abused,
6 a family or household member and that the person arrested is
7 guilty thereof.

8 (3) A police officer who has reasonable grounds to believe
9 that the person is physically abusing, or has physically abused,
10 a family or household member shall prepare a written report.

11 (4) Any police officer, with or without a warrant, may
12 take the following course of action where the officer has
13 reasonable grounds to believe that there was physical abuse or
14 harm inflicted by one person upon a family or household member,
15 regardless of whether the physical abuse or harm occurred in the
16 officer's presence:

17 (a) The police officer may make reasonable inquiry of the
18 family or household member upon whom the officer
19 believes physical abuse or harm has been inflicted and
20 other witnesses as there may be;

21 (b) Where the police officer has reasonable grounds to
22 believe that there is probable danger of further



1 physical abuse or harm being inflicted by one person
2 upon a family or household member, the police officer
3 lawfully may order the person to leave the premises
4 for a period of separation of twenty-four hours,
5 during which time the person shall not initiate any
6 contact, either by telephone or in person, with the
7 family or household member; provided that the person
8 is allowed to enter the premises with police escort to
9 collect any necessary personal effects;

10 (c) Where the police officer makes the finding referred to
11 in paragraph (b) and the incident occurs after 12:00
12 p.m. on any Friday, or on any Saturday, Sunday, or
13 legal holiday, the order to leave the premises and to
14 initiate no further contact shall commence immediately
15 and be in full force, but the twenty-four hour period
16 shall be enlarged and extended until 4:30 p.m. on the
17 first day following the weekend or legal holiday;

18 (d) All persons who are ordered to leave as stated above
19 shall be given a written warning citation stating the
20 date, time, and location of the warning and stating
21 the penalties for violating the warning. A copy of
22 the warning citation shall be retained by the police



- 1 officer and attached to a written report which shall
2 be submitted in all cases. A third copy of the
3 warning citation shall be given to the abused person;
- 4 (e) If the person so ordered refuses to comply with the
5 order to leave the premises or returns to the premises
6 before the expiration of the period of separation, or
7 if the person so ordered initiates any contact with
8 the abused person, the person shall be placed under
9 arrest for the purpose of preventing further physical
10 abuse or harm to the family or household member; and
- 11 (f) The police officer may seize all firearms and
12 ammunition that the police officer has reasonable
13 grounds to believe were used or threatened to be used
14 in the commission of an offense under this section.
- 15 (5) Abuse of a family or household member and refusal to
16 comply with the lawful order of a police officer under
17 subsection (4) are misdemeanors and the person shall be
18 sentenced as follows:
- 19 (a) For the first offense the person shall serve a minimum
20 jail sentence of forty-eight hours; and
- 21 (b) For a second offense that occurs within one year of
22 the first conviction, the person shall be termed a



1 "repeat offender" and serve a minimum jail sentence of
2 thirty days.

3 Upon conviction and sentencing of the defendant, the court shall
4 order that the defendant immediately be incarcerated to serve
5 the mandatory minimum sentence imposed; provided that the
6 defendant may be admitted to bail pending appeal pursuant to
7 chapter 804. The court may stay the imposition of the sentence
8 if special circumstances exist.

9 (6) Whenever a court sentences a person pursuant to
10 subsection (5), it also shall require that the offender undergo
11 any available domestic violence intervention programs ordered by
12 the court. However, the court may suspend any portion of a jail
13 sentence, except for the mandatory sentences under subsection
14 (5)(a) and (b), upon the condition that the defendant remain
15 arrest-free and conviction-free or complete court-ordered
16 intervention.

17 (7) For a third or any subsequent offense that occurs
18 within two years of a second or subsequent conviction, the
19 ~~[person]~~ offense shall be ~~[charged with]~~ a class C felony.

20 (8) Where the physical abuse consists of intentionally or
21 knowingly impeding the normal breathing or circulation of the
22 blood of the family or household member by applying pressure on



1 the throat or the neck, abuse of a family or household member is
2 a class C felony.

3 ~~(8)~~ (9) Any police officer who arrests a person pursuant
4 to this section shall not be subject to any civil or criminal
5 liability; provided that the police officer acts in good faith,
6 upon reasonable belief, and does not exercise unreasonable force
7 in effecting the arrest.

8 ~~(9)~~ (10) The family or household member who has been
9 physically abused or harmed by another person may petition the
10 family court, with the assistance of the prosecuting attorney of
11 the applicable county, for a penal summons or arrest warrant to
12 issue forthwith or may file a criminal complaint through the
13 prosecuting attorney of the applicable county.

14 ~~(10)~~ (11) The respondent shall be taken into custody and
15 brought before the family court at the first possible
16 opportunity. The court may dismiss the petition or hold the
17 respondent in custody, subject to bail. Where the petition is
18 not dismissed, a hearing shall be set.

19 ~~(11)~~ (12) This section shall not operate as a bar
20 against prosecution under any other section of this Code in lieu
21 of prosecution for abuse of a family or household member.



1 [~~(12)~~] (13) It shall be the duty of the prosecuting
2 attorney of the applicable county to assist any victim under
3 this section in the preparation of the penal summons or arrest
4 warrant.

5 [~~(13)~~] (14) This section shall not preclude the physically
6 abused or harmed family or household member from pursuing any
7 other remedy under law or in equity.

8 [~~(14)~~] (15) When a person is ordered by the court to
9 undergo any domestic violence intervention, that person shall
10 provide adequate proof of compliance with the court's order.
11 The court shall order a subsequent hearing at which the person
12 is required to make an appearance, on a date certain, to
13 determine whether the person has completed the ordered domestic
14 violence intervention. The court may waive the subsequent
15 hearing and appearance where a court officer has established
16 that the person has completed the intervention ordered by the
17 court."

18 SECTION 47. Section 710-1040, Hawaii Revised Statutes, is
19 amended to read as follows:

20 "**§710-1040 Bribery.** (1) A person commits the offense of
21 bribery if:



1 (a) The person confers, or offers or agrees to confer,
2 directly or indirectly, any pecuniary benefit upon a
3 public servant with the intent to influence the public
4 servant's vote, opinion, judgment, exercise of
5 discretion, or other action in the public servant's
6 official capacity; or

7 (b) While a public servant, the person solicits, accepts,
8 or agrees to accept, directly or indirectly, any
9 pecuniary benefit with the intent that the person's
10 vote, opinion, judgment, exercise of discretion, or
11 other action as a public servant will thereby be
12 influenced.

13 (2) It is a defense to a prosecution under subsection (1)
14 that the accused conferred or agreed to confer the pecuniary
15 benefit as a result of extortion or ~~coercion~~ duress.

16 (3) For purposes of this section, "public servant"
17 includes in addition to persons who occupy the position of
18 public servant as defined in section 710-1000(15), persons who
19 have been elected, appointed, or designated to become a public
20 servant although not yet occupying that position.

21 (4) Bribery is a class [C] B felony."



1 SECTION 48. Section 711-1111, Hawaii Revised Statutes, is
2 amended by amending subsection (1) to read as follows:

3 "(1) A person commits the offense of violation of privacy
4 in the second degree if, except in the execution of a public
5 duty or as authorized by law, the person intentionally:

6 (a) Trespasses on property for the purpose of subjecting
7 anyone to eavesdropping or other surveillance in a
8 private place;

9 (b) Peers or peeps into a window or other opening of a
10 dwelling or other structure adapted for sojourn or
11 overnight accommodations for the purpose of spying on
12 the occupant thereof or invading the privacy of
13 another person with a lewd or unlawful purpose, under
14 circumstances in which a reasonable person in the
15 dwelling or other structure would not expect to be
16 observed;

17 (c) Trespasses on property for the sexual gratification of
18 the actor;

19 ~~(b)~~ (d) Installs or uses, or both, in any private place,
20 without consent of the person or persons entitled to
21 privacy therein, any means or device for observing,
22 recording, amplifying, or broadcasting sounds or



1 events in that place [~~other than~~], including another
2 person in a stage of undress or sexual activity;

3 [+e>] (e) Installs or uses outside a private place any
4 device for hearing, recording, amplifying, or
5 broadcasting sounds originating in that place which
6 would not ordinarily be audible or comprehensible
7 outside, without the consent of the person or persons
8 entitled to privacy therein;

9 [+d>] (f) Covertly records or broadcasts an image of
10 another person's intimate area underneath clothing, by
11 use of any device, and that image is taken while that
12 person is in a public place and without that person's
13 consent;

14 [+e>] (g) Intercepts, without the consent of the sender or
15 receiver, a message or photographic image by
16 telephone, telegraph, letter, electronic transmission,
17 or other means of communicating privately; but this
18 paragraph does not apply to:

19 (i) Overhearing of messages through a regularly
20 installed instrument on a telephone party line or
21 an extension; or



1 (ii) Interception by the telephone company, electronic
2 mail account provider, or telephone or electronic
3 mail subscriber incident to enforcement of
4 regulations limiting use of the facilities or
5 incident to other operation and use;

6 ~~(f)~~ (h) Divulges, without the consent of the sender or
7 the receiver, the existence or contents of any message
8 or photographic image by telephone, telegraph, letter,
9 electronic transmission, or other means of
10 communicating privately, if the accused knows that the
11 message or photographic image was unlawfully
12 intercepted or if the accused learned of the message
13 or photographic image in the course of employment with
14 an agency engaged in transmitting it; or

15 ~~(g)~~ (i) Knowingly possesses materials created under
16 circumstances prohibited in section 711-1110.9."

17 SECTION 49. Section 712-1241, Hawaii Revised Statutes, is
18 amended by amending subsection (1) to read as follows:

19 "(1) A person commits the offense of promoting a dangerous
20 drug in the first degree if the person knowingly:

21 (a) Possesses one or more preparations, compounds,
22 mixtures, or substances of an aggregate weight of:



- 1 (i) One ounce or more, containing [~~methamphetamine,~~
2 heroin, morphine, or cocaine or any of their
3 respective salts, isomers, and salts of isomers;
4 or
5 (ii) One and one-half ounce or more, containing one or
6 more of any of the other dangerous drugs[+]
7 except methamphetamine; or
8 (b) Distributes, except for methamphetamine [~~as provided~~
9 ~~in section 712-1240.6~~]:
10 (i) Twenty-five or more capsules, tablets, ampules,
11 dosage units, or syrettes containing one or more
12 dangerous drugs; or
13 (ii) One or more preparations, compounds, mixtures, or
14 substances of an aggregate weight of:
15 (A) One-eighth ounce or more, containing heroin,
16 morphine, or cocaine or any of their
17 respective salts, isomers, and salts of
18 isomers; or
19 (B) Three-eighths ounce or more, containing any
20 other dangerous drug;



1 (c) Distributes any dangerous drug in any amount to a
2 minor except for methamphetamine [~~as provided in~~
3 ~~section 712-1240.6~~]; or

4 (d) Manufactures a dangerous drug in any amount, except
5 for methamphetamine [~~as provided in section 712-~~
6 ~~1240.6~~]; provided that this subsection shall not apply
7 to any person registered under section 329-32."

8 SECTION 50. Section 712-1240.6, Hawaii Revised Statutes,
9 is repealed.

10 [~~["§712-1240.6] Unlawful methamphetamine trafficking,~~
11 ~~penalties.~~ (1) A person commits the offense of unlawful
12 methamphetamine trafficking if the person knowingly
13 manufactures, distributes, dispenses, or possesses with intent
14 to manufacture, distribute or dispense, one or more
15 preparations, compounds, mixtures, or substances of
16 methamphetamine, or any of its salts, isomers, and salts of
17 isomers.

18 (2) The manufacture, distribution, or dispensing of or
19 possession with intent to manufacture, distribute, or dispense
20 one or more preparations, compounds, mixtures, or substances of
21 an aggregate weight of one eighth ounce or more of
22 methamphetamine, or any of its salts, isomers, and salts of



1 ~~isomers is a class A felony with a mandatory minimum prison term~~
2 ~~of five years; provided however:~~

3 ~~(a) If death or serious bodily injury as defined in~~
4 ~~section 707 700 to any person other than the~~
5 ~~defendant, results from the manufacture, distribution,~~
6 ~~or dispensing of or possession with intent to~~
7 ~~manufacture, distribute, or dispense any~~
8 ~~methamphetamine substance, conviction under this~~
9 ~~section shall be treated as a class A felony, with a~~
10 ~~mandatory minimum prison term of ten years and a fine~~
11 ~~not to exceed \$4,000,000 if the defendant is an~~
12 ~~individual, or a fine not to exceed \$10,000,000 if the~~
13 ~~defendant is other than an individual; and~~

14 ~~(b) If the defendant has been convicted of any felony drug~~
15 ~~offense prior to conviction of the offense under this~~
16 ~~section, conviction under this section shall be~~
17 ~~punishable by a term of life imprisonment with the~~
18 ~~possibility of parole, with a mandatory minimum prison~~
19 ~~term of fifteen years and a fine not to exceed~~
20 ~~\$8,000,000 if the defendant is an individual, or a~~
21 ~~fine not to exceed \$20,000,000 if the defendant is~~
22 ~~other than an individual.~~



1 ~~(3) The manufacture, distribution, or dispensing of one or~~
2 ~~more preparations, compounds, mixtures, or substances of an~~
3 ~~aggregate weight of less than one eighth ounce of~~
4 ~~methamphetamine, or any of its salts, isomers, and salts of~~
5 ~~isomers is a class B felony with a mandatory minimum prison term~~
6 ~~of three years; provided however:~~

7 ~~(a) If death or serious bodily injury as defined in~~
8 ~~section 707 700 to any person other than the defendant~~
9 ~~results from the manufacture, distribution or~~
10 ~~dispensing of any methamphetamine substance,~~
11 ~~conviction under this section shall be treated as a~~
12 ~~class B felony, with a mandatory minimum prison term~~
13 ~~of five years and a fine not to exceed \$2,000,000 if~~
14 ~~the defendant is an individual, or a fine not to~~
15 ~~exceed \$5,000,000 if the defendant is other than an~~
16 ~~individual; and~~

17 ~~(b) If the defendant has been convicted of any felony drug~~
18 ~~offense prior to conviction of the offense under this~~
19 ~~section, conviction under this section shall be~~
20 ~~treated as a class A felony, with a mandatory minimum~~
21 ~~prison term of eight years and a fine not to exceed~~
22 ~~\$4,000,000 if the defendant is an individual, or a~~



1 ~~fine not to exceed \$10,000,000 if the defendant is~~
2 ~~other than an individual.~~

3 ~~(c) If the distribution or dispensing of any amount of a~~
4 ~~methamphetamine substance is to a minor, then~~
5 ~~conviction under this section shall be treated as a~~
6 ~~class A felony, with a mandatory minimum prison term~~
7 ~~of five years.~~

8 ~~(4) A defendant convicted of the offense of unlawful~~
9 ~~methamphetamine trafficking shall be sentenced in accordance~~
10 ~~with this section, notwithstanding sections 706-620(2), 706-659,~~
11 ~~706-640, and 706-641. When sentencing a defendant convicted of~~
12 ~~the offense of unlawful methamphetamine trafficking, the court~~
13 ~~may order restitution or reimbursement to:~~

14 ~~(a) The state or county government for the cost incurred~~
15 ~~for any cleanup associated with the manufacture,~~
16 ~~distribution, or dispensing of methamphetamine, or any~~
17 ~~of its salts, isomers, and salts of isomers by the~~
18 ~~defendant; and~~

19 ~~(b) Any other person injured as a result of the~~
20 ~~manufacture, distribution, or dispensing of~~
21 ~~methamphetamine, or any of its salts, isomers, and~~
22 ~~salts of isomers, by the defendant."]~~



1 SECTION 51. This Act does not affect rights and duties
2 that matured, penalties that were incurred, and proceedings that
3 were begun, before its effective date.

4 SECTION 52. In codifying the new sections added by section
5 11 and 44 of this Act, the revisor of statutes shall substitute
6 appropriate section numbers for the letters used in designating
7 the new sections in this Act.

8 SECTION 53. Statutory material to be repealed is bracketed
9 and stricken. New statutory material is underscored.

10 SECTION 54. This Act shall take effect on July 1, 2096;
11 provided that on June 30, 2007, sections 23 and 24 of this Act
12 shall be repealed and sections 706-661 and 706-662, Hawaii
13 Revised Statutes, shall be reenacted in the form in which they
14 read prior to this Act taking effect.

