

Report Title:

Penal Code; Revision

Description:

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



A BILL FOR AN ACT

RELATING TO THE PENAL CODE.

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

1 SECTION 1. Section 704-401, Hawaii Revised Statutes, is
2 amended to read as follows:

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

10 SECTION 2. Section 704-404, Hawaii Revised Statutes, is
11 amended to read as follows:

12 "**§704-404 Examination of defendant with respect to**
13 **physical or mental disease, disorder, or defect.** (1) Whenever
14 the defendant has filed a notice of intention to rely on the
15 defense of physical or mental disease, disorder, or defect
16 excluding responsibility, or there is reason to doubt the
17 defendant's fitness to proceed, or reason to believe that the
18 physical or mental disease, disorder, or defect of the defendant



1 will or has become an issue in the case, the court may
2 immediately suspend all further proceedings in the prosecution.
3 If a trial jury has been empanelled, it shall be discharged or
4 retained at the discretion of the court. The [~~dismissal~~]
5 discharge of the trial jury shall not be a bar to further
6 prosecution.

7 (2) Upon suspension of further proceedings in the
8 prosecution, the court shall appoint three qualified examiners
9 in felony cases and one qualified examiner in nonfelony cases to
10 examine and report upon the physical and mental condition of the
11 defendant. In felony cases the court shall appoint at least one
12 psychiatrist and at least one licensed psychologist. The third
13 member may be [~~either~~] a psychiatrist, licensed psychologist, or
14 qualified physician. One of the three shall be a psychiatrist
15 or licensed psychologist designated by the director of health
16 from within the department of health. In nonfelony cases the
17 court may appoint either a psychiatrist or a licensed
18 psychologist. All examiners shall be appointed from a list of
19 certified examiners as determined by the department of health.
20 The court, in appropriate circumstances, may appoint an
21 additional examiner or examiners. The examination may be
22 conducted on an out-patient basis or, in the court's discretion,



1 when necessary the court may order the defendant to be committed
2 to a hospital or other suitable facility for the purpose of the
3 examination for a period not exceeding thirty days, or such
4 longer period as the court determines to be necessary for the
5 purpose. The court may direct that one or more qualified
6 physicians or psychologists retained by the defendant be
7 permitted to witness [~~and participate in~~] the examination. As
8 used in this section, the term "licensed psychologist" includes
9 psychologists exempted from licensure by section 465-3(a)(3).

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



- 1 (4) The report of the examination shall include the
2 following:
- 3 (a) A description of the nature of the examination;
- 4 (b) A diagnosis of the physical or mental condition of the
5 defendant;
- 6 (c) An opinion as to the defendant's capacity to
7 understand the proceedings against the defendant and
8 to assist in the defendant's own defense;
- 9 (d) An opinion as to the extent, if any, to which the
10 capacity of the defendant to appreciate the
11 wrongfulness of the defendant's conduct or to conform
12 the defendant's conduct to the requirements of law was
13 impaired at the time of the conduct alleged;
- 14 (e) When directed by the court, an opinion as to the
15 capacity of the defendant to have a particular state
16 of mind [~~which~~] that is required to establish an
17 element of the offense charged; and
- 18 (f) Where more than one examiner is appointed, a statement
19 that the diagnosis and opinion rendered were arrived
20 at independently of any other examiner, unless there
21 is a showing to the court of a clear need for
22 communication between or among the examiners for



1 clarification. A description of the communication
2 shall be included in the report. After all reports
3 are submitted to the court, examiners may confer
4 without restriction.

5 (5) If the examination cannot be conducted by reason of
6 the unwillingness of the defendant to participate therein, the
7 report shall so state and shall include, if possible, an opinion
8 as to whether such unwillingness of the defendant was the result
9 of physical or mental disease, disorder, or defect.

10 (6) [~~The~~] Three copies of the report of the examination,
11 including any supporting documents, shall be filed [~~in~~
12 ~~triplicate~~] with the clerk of the court, who shall cause copies
13 to be delivered to the prosecuting attorney and to counsel for
14 the defendant.

15 (7) Any examiner shall be permitted to make a separate
16 explanation reasonably serving to clarify the examiner's
17 diagnosis or opinion.

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



1 (9) The compensation of persons making or assisting in the
2 examination, other than those retained by the nonindigent
3 defendant, who are not undertaking the examination upon
4 designation by the director of health as part of their normal
5 duties as employees of the State or a county, shall be paid by
6 the State."

7 SECTION 3. Section 704-406, Hawaii Revised Statutes, is
8 amended to read as follows:

9 "**§704-406 Effect of finding of unfitness to proceed.** (1)

10 If the court determines that the defendant lacks fitness to
11 proceed, the proceeding against the defendant shall be
12 suspended, except as provided in section 704-407, and the court
13 shall commit the defendant to the custody of the director of
14 health to be placed in an appropriate institution for detention,
15 care, and treatment. If the court is satisfied that the
16 defendant may be released on condition without danger to the
17 defendant or to the person or property of others, the court
18 shall order the defendant's release, which shall continue at the
19 discretion of the court[~~7~~] on conditions the court determines
20 necessary. A copy of the report filed pursuant to section 704-
21 404 shall be attached to the order of commitment or order of
22 [~~conditional~~] release[~~7~~] on conditions.



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

10 (a) Order the defendant to be discharged [~~or, subject~~];

11 (b) Subject to the law governing the involuntary
12 [~~hospitalization or conditional release~~] civil
13 commitment of persons [~~suffering from~~] affected by
14 physical or mental disease, disorder, or defect, order
15 the defendant to be committed to the custody of the
16 director of health to be placed in an appropriate
17 institution for detention, care, and treatment; or

18 (c) Subject to the law governing involuntary outpatient
19 treatment, order the defendant to be released on
20 conditions the court determines necessary.

21 (3) Within a reasonable time following any commitment
22 under subsection (1), the director of health shall report to the



1 court on whether the defendant presents a substantial likelihood
2 of becoming fit to proceed in the future. The court, in
3 addition, may appoint a panel of three qualified examiners in
4 felony cases or one qualified examiner in nonfelony cases to
5 make a report. If, following a report, the court determines
6 that the defendant probably will remain unfit to proceed, the
7 court may dismiss the charge and [~~release~~]:

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

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

14 (4) Within a reasonable time following any [~~conditional~~]
15 release under subsection (1), the court shall appoint a panel of
16 three qualified examiners in felony cases or one qualified
17 examiner in nonfelony cases to report to the court on whether
18 the defendant presents a substantial likelihood of becoming fit
19 to proceed in the future. If, following the report, the court
20 determines that the defendant probably will remain unfit to
21 proceed, the court may dismiss the charge and [~~release~~]:

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



1 (b) Subject to the law governing involuntary civil
2 commitment [~~procedures~~], order the defendant to be
3 committed to the custody of the director of health to
4 be placed in an appropriate institution for detention,
5 care, and treatment."

6 SECTION 4. Section 704-407, Hawaii Revised Statutes, is
7 amended to read as follows:

8 "~~§704-407 Special [post-commitment or post-conditional~~
9 ~~release] hearing~~ following commitment or release on conditions.

10 (1) At any time after commitment as provided in section 704-
11 406, the defendant or the defendant's counsel or the director of
12 health may apply for a special post-commitment or post-release
13 hearing. If the application is made by or on behalf of a
14 defendant not represented by counsel, the defendant shall be
15 afforded a reasonable opportunity to obtain counsel, and if the
16 defendant lacks funds to do so, counsel shall be assigned by the
17 court. The application shall be granted only if the counsel for
18 the defendant satisfies the court by affidavit or otherwise
19 that, as an attorney, the counsel has reasonable grounds for a
20 good faith belief that the counsel's client has an objection
21 based upon legal grounds to the charge.



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

7 (3) After the hearing, the court shall rule on any legal
8 objection raised by the application and [~~may~~], in an appropriate
9 case, may quash the indictment or other charge, [~~or~~] find it to
10 be defective or insufficient, or otherwise terminate the
11 proceedings on the law. In any such case, unless all defects in
12 the proceedings are promptly cured, the court shall terminate
13 the commitment or [~~conditional~~] release ordered under section
14 704-406 and [~~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 a
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 such
3 conditions as the court deems necessary."

4 SECTION 5. Section 704-408, Hawaii Revised Statutes, is
5 amended to read as follows:

6 "**§704-408 Determination of irresponsibility.** If the
7 report of the examiners filed pursuant to section 704-404, or
8 the report of examiners of the defendant's choice under section
9 704-409, states that the defendant at the time of the conduct
10 alleged [~~suffered from~~] was affected by a physical or mental
11 disease, disorder, or defect [~~which~~] that substantially impaired
12 the defendant's capacity to appreciate the wrongfulness of the
13 defendant's conduct or to conform the defendant's conduct to the
14 requirements of law, the court shall submit the defense of
15 physical or mental disease, disorder, or defect to the jury or
16 the trier of fact at the trial of the charge against the
17 defendant."

18 SECTION 6. Section 704-411, Hawaii Revised Statutes, is
19 amended to read as follows:

20 "**§704-411 Legal effect of acquittal on the ground of**
21 **physical or mental disease, disorder, or defect excluding**
22 **responsibility; commitment; conditional release; discharge;**



1 **procedure for separate post-acquittal hearing.** (1) When a
2 defendant is acquitted on the ground of physical or mental
3 disease, disorder, or defect excluding responsibility, the court
4 [~~shall~~], on the basis of the report made pursuant to section
5 704-404, if uncontested, or the medical or psychological
6 evidence given at the trial or at a separate hearing, shall make
7 an order as follows:

8 (a) The court shall order the defendant to be committed to
9 the custody of the director of health to be placed in
10 an appropriate institution for custody, care, and
11 treatment if the court finds that the defendant
12 [~~presents~~]:

13 (i) Is affected by a physical or mental disease,
14 disorder, or defect;

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

17 (iii) Is not a proper subject for conditional release;
18 provided that the director of health shall place
19 defendants charged with misdemeanors or felonies not
20 involving violence or attempted violence in the least
21 restrictive environment appropriate in light of the



1 defendant's treatment needs and the need to prevent
2 harm to the person confined and others; or

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

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

19 (2) The court [~~shall~~], upon its own motion or on the
20 motion of the prosecuting attorney or the defendant, shall order
21 a separate post-acquittal hearing for the purpose of taking
22 evidence on the issue of physical or mental disease, disorder,



1 or defect and the risk of danger [~~which~~] that the defendant
2 presents to [~~oneself~~] self or others.

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

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

14 (b) In felony cases, the court shall appoint three
15 qualified examiners to examine and report upon the
16 physical and mental condition of the defendant. In
17 each case the court shall appoint at least one
18 psychiatrist and at least one licensed psychologist.
19 The third member may be [~~either~~] a psychiatrist, a
20 licensed psychologist, or a qualified physician. One
21 of the three shall be a psychiatrist or licensed
22 psychologist designated by the director of health from



1 within the department of health. The three examiners
2 shall be appointed from a list of certified examiners
3 as determined by the department of health.

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

18 (4) Whether the court's order under subsection (1) is made
19 on the basis of the medical or psychological evidence given at
20 the trial, or on the basis of the report made pursuant to
21 section 704-404, or the medical or psychological evidence given
22 at a separate hearing, the burden shall be upon the State to



1 prove, by a preponderance of the evidence, that the defendant is
2 affected by a physical or mental disease, disorder, or defect
3 and may not safely be discharged and that the defendant should
4 be either committed or conditionally released as provided in
5 subsection (1).

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

8 SECTION 7. Section 704-412, Hawaii Revised Statutes, is
9 amended to read as follows:

10 **"§704-412 Committed person; application for conditional**
11 **release or discharge; by the director of health; by the person.**

12 (1) After the expiration of at least ninety days following the
13 order of commitment pursuant to section 704-411, if the director
14 of health is of the opinion that the person committed to [~~his~~]
15 the director's custody is still affected by a physical or mental
16 disease, disorder, or defect and may be released on condition or
17 discharged without danger to [~~himself~~] self or to the person or
18 property of others[~~, he~~] or that the person is no longer
19 affected by a physical or mental disease, disorder, or defect,
20 the director shall make application for the discharge or
21 conditional release of [~~such~~] the person in a report to the
22 court [~~by~~] from which [~~such~~] the person was committed and shall



1 transmit a copy of the application and report to the prosecuting
2 attorney of the county from which the [~~defendant~~] person was
3 committed. The [~~defendant~~] person shall be given notice of such
4 application.

5 (2) After the expiration of ninety days from the date of
6 the order of commitment pursuant to section 704-411, the person
7 committed may apply to the court [~~by~~] from which [~~he~~] the person
8 was committed for an order of discharge [~~or conditional release~~]
9 upon the ground that the [~~same may be ordered~~] person is no
10 longer affected by a physical or mental disease, disorder, or
11 defect. The person committed may apply for discharge or
12 conditional release upon the ground that, though still affected
13 by a physical or mental disease, disorder, or defect, the person
14 may be released without danger to [~~himself~~] self or to the
15 person or property of others. A copy of the application shall
16 be transmitted to the prosecuting attorney of the county from
17 which the defendant was committed. If the determination of the
18 court is adverse to the application, [~~such~~] the person shall not
19 be permitted to file a further application until one year has
20 elapsed from the date of any preceding hearing on an application
21 for [~~his~~] the person's discharge or conditional release."



1 SECTION 8. Section 704-413, Hawaii Revised Statutes, is
2 amended to read as follows:

3 **"§704-413 Conditional release; application for**
4 **modification or discharge; termination of conditional release**
5 **and commitment.** (1) Any person released [~~on condition~~]
6 pursuant to section 704-411 shall continue to receive mental
7 health or other appropriate treatment and care deemed
8 appropriate by the director of health until discharged from
9 conditional release. The person shall follow all prescribed
10 treatments and take all prescribed medications according to the
11 instructions of the person's treating mental health
12 professional. If any mental health professional treating any
13 conditionally released person believes either the person is
14 [~~either~~] not complying with the requirements of this section[~~7~~]
15 or there is other evidence that hospitalization is appropriate,
16 the mental health professional shall report the matter to the
17 probation officer of the conditionally released person. The
18 probation officer may order the conditionally released person to
19 be hospitalized for a period not to exceed seventy-two hours if
20 the probation officer has probable cause to believe the person
21 has violated the requirements of this subsection. No person
22 shall be hospitalized beyond the seventy-two hour period unless



1 a hearing has been held pursuant to subsection (3)~~[.]~~ and as
2 provided in section 1-29.

3 (2) Any person released [~~on condition~~] pursuant to section
4 704-411 may apply to the court ordering the conditional release
5 for discharge from, or modification of, the order granting
6 conditional release on the ground that [~~he~~] the person is no
7 longer affected by a physical or mental disease, disorder, or
8 defect and may be discharged, or the order may be modified,
9 without danger to [~~himself~~] the person or to others. The
10 application shall be accompanied by a letter from or supporting
11 affidavit of a qualified physician or licensed psychologist. A
12 copy of the application and letter or affidavit shall be
13 transmitted to the prosecuting attorney of the [~~county in which~~
14 ~~the person is confined~~] circuit from which the order issued and
15 to any persons supervising [~~his~~] the release, and the hearing on
16 the application shall be held following notice to such persons.
17 If the determination of the court is adverse to the application,
18 [~~such~~] the person shall not be permitted to file further
19 application until one year has elapsed from the date of any
20 preceding hearing on an application for modification of
21 conditions of release or for discharge.



1 (3) If, at any time after the order pursuant to section
2 704-411 granting conditional release, the court [~~shall~~
3 ~~determine,~~] determines, after hearing evidence, that:

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

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

13 SECTION 9. Section 704-414, Hawaii Revised Statutes, is
14 amended to read as follows:

15 "**§704-414 Procedure upon application for discharge,**
16 **conditional release, or modification of conditions of release.**

17 Upon filing of an application pursuant to section 704-412 for
18 discharge or conditional release, or upon the filing of an
19 application pursuant to section 704-413 for discharge or for
20 modification of conditions of release, the court shall appoint
21 three qualified examiners in felony cases and one qualified
22 examiner in nonfelony cases to examine and report upon the



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

20 SECTION 10. Section 704-415, Hawaii Revised Statutes, is
21 amended to read as follows:



1 "§704-415 Disposition of application for discharge,
2 conditional release, or modification of conditions of release.

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

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

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

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

18 (2) Any such hearing shall be deemed a civil proceeding
19 and the burden shall be upon the applicant to prove that the
20 person is no longer affected by a physical or mental disease,
21 disorder, or defect or may safely be either released on the
22 conditions applied for or discharged. According to the



1 determination of the court upon the hearing, the person shall
2 [~~thereupon~~] be [~~discharged, or released~~]:

3 (a) Discharged;

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

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

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

11 "[~~+~~]**§704-416.5**[~~+~~] **Supervision of person on conditional**
12 **release.** (1) Any person hospitalized under this chapter who is
13 subsequently placed on conditional release shall be subject to
14 the supervision of a probation officer until such time as that
15 supervision is terminated by order of the court.

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

20 SECTION 12. Section 706-604, Hawaii Revised Statutes, is
21 amended to read as follows:



1 "§706-604 Opportunity to be heard with respect to
2 sentence; notice of pre-sentence report; opportunity to
3 controvert or supplement; transmission of report to department.

4 (1) Before imposing sentence, the court shall afford a fair
5 opportunity to the defendant to be heard on the issue of the
6 defendant's disposition.

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

18 (3) In all circuit court cases, the court shall afford a
19 fair opportunity to the victim to be heard on the issue of the
20 defendant's disposition, before imposing sentence. The court,
21 service center, or agency personnel who prepare the pre-sentence
22 diagnosis and report shall inform the victim of the sentencing



1 date and of the victim's opportunity to be heard. In the case
2 of a homicide or where the victim is otherwise unable to appear
3 at the sentencing hearing, the victim's family shall be afforded
4 the fair opportunity to be heard.

5 (4) If the defendant is sentenced to imprisonment, a copy
6 of the report of any pre-sentence diagnosis or psychological,
7 psychiatric, or other medical examination, which shall
8 incorporate any amendments ordered by the court, shall be
9 transmitted immediately to the department of public safety [~~or,~~
10 ~~when the defendant is committed to the custody of a specific~~
11 ~~institution, to that institution]."~~

12 SECTION 13. Section 706-605, Hawaii Revised Statutes, is
13 amended to read as follows:

14 **"§706-605 Authorized disposition of convicted defendants.**

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

20 (a) To be placed on probation as authorized by part II of
21 this chapter;



- 1 (b) To pay a fine as authorized by part III and section
2 706-624 of this chapter;
- 3 (c) To be imprisoned for a term as authorized by part IV
4 of this chapter; or
- 5 [~~(d)~~] ~~To make restitution in an amount the defendant can~~
6 ~~afford to pay; provided that the court may order any~~
7 ~~restitution to be paid to victims pursuant to section~~
8 ~~706-646 or to the crime victim compensation special~~
9 ~~fund in the event that the victim has been given an~~
10 ~~award for compensation under chapter 351 and, if the~~
11 ~~court orders, in addition to restitution, payment of~~
12 ~~fine in accordance with paragraph (b), the payment of~~
13 ~~restitution and a compensation fee shall have priority~~
14 ~~over the payment of the fine; payment of restitution~~
15 ~~shall have priority over payment of a compensation~~
16 ~~fee; or~~
- 17 ~~(e)]~~ (d) To perform services for the community under the
18 supervision of a governmental agency or benevolent or
19 charitable organization or other community service
20 group or appropriate supervisor; provided that the
21 convicted person who performs such services shall not
22 be deemed to be an employee of the governmental agency



1 or assigned work site for any purpose. All persons
2 sentenced to perform community service shall be
3 screened and assessed for appropriate placement by a
4 governmental agency coordinating public service work
5 placement as a condition of sentence.

6 (2) The court shall not sentence a defendant to probation
7 and imprisonment except as authorized by part II of this
8 chapter.

9 (3) In addition to any disposition authorized in
10 subsection (1) [~~of this section~~], the court may sentence a
11 person convicted of a misdemeanor or petty misdemeanor to a
12 suspended sentence.

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

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

19 (6) The court shall impose a compensation fee upon every
20 person convicted of a criminal offense pursuant to section
21 351-62.6; provided that the court shall waive the imposition of
22 a compensation fee if it finds that the defendant is unable to



1 pay the compensation fee. When a defendant is ordered to make
2 payments in addition to the compensation fee, payments by the
3 defendant shall be made in the following order of priority:

- 4 (a) Restitution;
- 5 (b) Crime victim compensation fee;
- 6 (c) Probation services fee;
- 7 (d) Other fees; and
- 8 (e) Fines.

9 (7) The court shall order the defendant to make
10 restitution for losses as provided in section 706-646. In
11 ordering restitution, the court shall not consider the
12 defendant's financial ability to make restitution in determining
13 the amount of restitution to order. The court, however, shall
14 consider the defendant's financial ability to make restitution
15 for the purpose of establishing the time and manner of payment.

16 [~~7~~] (8) This chapter does not deprive the court of any
17 authority conferred by law to decree a forfeiture of property,
18 suspend or cancel a license, remove a person from office, or
19 impose any other civil penalty. Such a judgment or order may be
20 included in the sentence."

21 SECTION 14. Section 706-622.5, Hawaii Revised Statutes, is
22 amended by amending subsection (1) to read as follows:



1 "(1) Notwithstanding section 706-620(3), a person
2 convicted for the first time for any offense under section 329-
3 43.5 involving the possession or use of drug paraphernalia or
4 any felony offense under part IV of chapter 712 involving the
5 possession or use[, ~~not including to distribute or manufacture~~
6 ~~as defined in section 712-1240,~~] of any dangerous drug,
7 detrimental drug, harmful drug, intoxicating compound,
8 marijuana, or marijuana concentrate, as defined in section 712-
9 1240, [~~unlawful methamphetamine trafficking as provided in~~
10 ~~section 712-1240.6, or involving possession or use of drug~~
11 ~~paraphernalia under section 329-43.5,~~] but not including any
12 offense under part IV of chapter 712 involving the distribution
13 or manufacture of any such drugs or substances and not including
14 any methamphetamine trafficking offenses under sections 712-A
15 and 712-B, is eligible to be sentenced to probation under
16 subsection (2) if the person meets the following criteria:
17 (a) The court has determined that the person is nonviolent
18 after reviewing the person's criminal history, the
19 factual circumstances of the offense for which the
20 person is being sentenced, and any other relevant
21 information;



1 (b) The person has been assessed by a certified substance
2 abuse counselor to be in need of substance abuse
3 treatment due to dependency or abuse under the
4 applicable Diagnostic and Statistical Manual and
5 Addiction Severity Index; and

6 (c) Except for those persons directed to substance abuse
7 treatment under the supervision of the drug court, the
8 person presents a proposal to receive substance abuse
9 treatment in accordance with the treatment plan
10 prepared by a certified substance abuse counselor
11 through a substance abuse treatment program that
12 includes an identified source of payment for the
13 treatment program."

14 SECTION 15. Chapter 706, part II, Hawaii Revised Statutes,
15 is amended by adding a new section to be appropriately
16 designated and to read as follows:

17 **"§706-A Sentencing for first-time property offenders;**
18 **expungement.** (1) Notwithstanding section 706-620(3), a person
19 convicted for the first time of any class C felony property
20 offense under chapter 708 who has not previously been sentenced
21 under section 706-606.5, section 706-622.5, or this section is



1 eligible to be sentenced to probation under subsection (2) if
2 the person meets the following criteria:

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

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

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

16 (d) The court has determined that the person is genuinely
17 motivated to obtain and maintain substance abuse
18 treatment, based upon consideration of the person's
19 history, including whether substance abuse treatment
20 has previously been afforded to the person, and an
21 appraisal of the person's current circumstances and
22 attitude; and



1 (e) Except for those persons directed to substance abuse
2 treatment under the supervision of the drug court, the
3 person presents a proposal to receive substance abuse
4 treatment in accordance with the treatment plan
5 prepared by a certified substance abuse counselor
6 through a substance abuse treatment program that
7 includes an identified source of payment for the
8 treatment program.

9 (2) A person eligible under subsection (1) may be
10 sentenced to probation to undergo and complete a substance abuse
11 treatment program if the court determines that the person can
12 benefit from substance abuse treatment and, notwithstanding that
13 the person would be subject to sentencing as a repeat offender
14 under section 706-606.5, the person should not be incarcerated
15 in order to protect the public. If the person fails to complete
16 the substance abuse treatment program and the court determines
17 that the person cannot benefit from any other suitable substance
18 abuse treatment program, the person shall be sentenced as
19 provided in this part. As a condition of probation under this
20 subsection, the court may direct the person to undergo and
21 complete substance abuse treatment under the supervision of the
22 drug court if the person has a history or relapse in treatment



1 programs. The court may require other terms and conditions of
2 probation, including requiring that the person contribute to the
3 cost of the substance abuse treatment program and comply with
4 deadlines for entering into the substance abuse treatment
5 program.

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

13 (4) The court, upon written application from a person
14 sentenced under this part, shall issue a court order to expunge
15 the record of conviction for that particular offense; provided
16 that a person has successfully completed the substance abuse
17 treatment program and complied with other terms and conditions
18 of probation. A person sentenced to probation under this
19 section shall be eligible for expungement under this subsection
20 only if the person has no other felony conviction on the
21 person's criminal history record.



1 (5) Nothing in this section shall be construed to give
2 rise to a cause of action against the State, a state employee,
3 or a treatment provider."

4 SECTION 16. Section 706-623, Hawaii Revised Statutes, is
5 amended by amending subsection (1) to read as follows:

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

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

11 (b) Five years upon conviction of a class B or class C
12 felony;

13 (c) One year upon conviction of a misdemeanor; except that
14 upon a conviction under section 586-4, 586-11, or 709-
15 906, the court may sentence the defendant to a period
16 of probation not exceeding two years; or

17 (d) Six months upon conviction of a petty misdemeanor[~~-~~],
18 provided that up to one year may be imposed upon a
19 finding of good cause.

20 The court, on application of a probation officer, on application
21 of the defendant, or on its own motion, may discharge the
22 defendant at any time. Prior to granting early discharge, the



1 court shall afford the prosecuting attorney an opportunity to be
2 heard. The terms of probation provided in this part, other than
3 in this section, shall not apply to sentences of probation
4 imposed under section 706-606.3."

5 SECTION 17. Section 706-624, Hawaii Revised Statutes, is
6 amended to read as follows:

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

- 10 (a) That the defendant not commit another federal or state
11 crime or engage in criminal conduct in any foreign
12 jurisdiction or under military jurisdiction that would
13 constitute a crime under Hawaii law during the term of
14 probation;
- 15 (b) That the defendant report to a probation officer as
16 directed by the court or the probation officer;
- 17 (c) That the defendant remain within the jurisdiction of
18 the court, unless granted permission to leave by the
19 court or a probation officer;
- 20 (d) That the defendant notify a probation officer prior to
21 any change in address or employment;



1 (e) That the defendant notify a probation officer promptly
2 if arrested or questioned by a law enforcement
3 officer; ~~and~~

4 (f) That the defendant permit a probation officer to visit
5 the defendant at the defendant's home or elsewhere as
6 specified by the court~~[-]~~; and

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

10 (2) Discretionary conditions. The court may provide, as
11 further conditions of a sentence of probation, to the extent
12 that the conditions are reasonably related to the factors set
13 forth in section 706-606 and to the extent that the conditions
14 involve only deprivations of liberty or property as are
15 reasonably necessary for the purposes indicated in section 706-
16 606(2), that the defendant:

17 (a) Serve a term of imprisonment not exceeding ~~[one year~~
18 ~~in felony cases, and not exceeding]~~ two years in class
19 A felony cases, eighteen months in class B felony
20 cases, one year in class C felony cases, six months in
21 misdemeanor cases~~[-]~~, and five days in petty
22 misdemeanor cases; provided that notwithstanding any



1 other provision of law, any order of imprisonment
2 under this subsection that provides for prison work
3 release shall require the defendant to pay thirty per
4 cent of the defendant's gross pay earned during the
5 prison work release period to satisfy any restitution
6 order. The payment shall be handled by the adult
7 probation division and shall be paid to the victim on
8 a monthly basis;

9 (b) Perform a specified number of hours of services to the
10 community as described in section 706-605(1)(e);

11 (c) Support the defendant's dependents and meet other
12 family responsibilities;

13 (d) Pay a fine imposed pursuant to section 706-605(1)(b);

14 ~~[(e) Make restitution as specified in section 706-~~
15 ~~605(1)(d);~~

16 ~~+(f)]~~ (e) Work conscientiously at suitable employment or
17 pursue conscientiously a course of study or vocational
18 training that will equip the defendant for suitable
19 employment;

20 ~~+(g)]~~ (f) Refrain from engaging in a specified occupation,
21 business, or profession bearing a reasonably direct
22 relationship to the conduct constituting the crime or



1 engage in the specified occupation, business, or
2 profession only to a stated degree or under stated
3 circumstances;

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

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

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

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



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



1 (3) Written statement of conditions. The court shall
2 order the defendant at the time of sentencing to sign a written
3 acknowledgement of receipt of conditions of probation. The
4 defendant shall be given a written copy of any requirements
5 imposed pursuant to this section, stated with sufficient
6 specificity to enable the defendant to [~~guide the defendant's~~
7 ~~self~~] comply with the conditions accordingly."

8 SECTION 18. Section 706-643, Hawaii Revised Statutes, is
9 amended by amending subsection (1) to read as follows:

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

15 SECTION 19. Section 706-646, Hawaii Revised Statutes, is
16 amended by amending subsections (2) and (3) to read as follows:

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



1 for compensation under chapter 351. If the court orders payment
2 of a fine in addition to restitution or a compensation fee, or
3 both, the payment of restitution and compensation fee shall have
4 priority over the payment of the fine, and payment of
5 restitution shall have priority over payment of a compensation
6 fee.

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

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

20 (b) Medical expenses; and

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



1 SECTION 20. Section 706-661, Hawaii Revised Statutes, is
2 amended to read as follows:

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

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

20 In exercising its discretion on whether to impose the
21 extended term of imprisonment or to use other available
22 sentencing options, the court shall consider whether the



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

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

9 SECTION 21. Section 706-662, Hawaii Revised Statutes, is
10 amended to read as follows:

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

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



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.

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 22. 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 23. Section 707-700, Hawaii Revised Statutes, is
4 amended as follows:

5 1. By amending the definition of "mentally incapacitated"
6 to read:

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

11 2. By amending the definition of "sexual penetration" to
12 read:

13 "\"Sexual penetration\" means:

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



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

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

5 SECTION 24. Section 707-701, Hawaii Revised Statutes, is
6 amended by amending subsection (1) to read as follows:

7 "(1) A person commits the offense of murder in the first
8 degree if the person intentionally or knowingly causes the death
9 of:

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

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

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

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

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

20 SECTION 25. Section 707-702, Hawaii Revised Statutes, is
21 amended by amending subsection (1) to read as follows:

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



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

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

5 SECTION 26. Section 707-711, Hawaii Revised Statutes, is
6 amended by amending subsection (1) to read as follows:

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

9 (a) The person intentionally or knowingly causes
10 substantial bodily injury to another;

11 (b) The person recklessly causes serious or substantial
12 bodily injury to another person;

13 (c) The person intentionally or knowingly causes bodily
14 injury to a correctional worker, as defined in section
15 710-1031(2), who is engaged in the performance of duty
16 or who is within a correctional facility;

17 (d) The person intentionally or knowingly causes bodily
18 injury to another person with a dangerous instrument;
19 or

20 (e) The person intentionally or knowingly causes bodily
21 injury to an educational worker who is engaged in the
22 performance of duty or who is within an educational



1 facility. For the purposes of this section,
2 "educational worker" means: any administrator,
3 specialist, counselor, teacher, or employee of the
4 department of education~~[, or]~~; a person who is a
5 volunteer in a school program, activity, or function
6 that is established, sanctioned, or approved by the
7 department of education; or a person hired by the
8 department of education on a contractual basis and
9 engaged in carrying out an educational function."

10 SECTION 27. Section 707-714, Hawaii Revised Statutes, is
11 amended to read as follows:

12 "**§707-714 Reckless endangering in the second degree.** (1)

13 A person commits the offense of reckless endangering in the
14 second degree if the person ~~engages~~:

15 (a) Engages in conduct ~~[which]~~ that recklessly places
16 another person in danger of death or serious bodily
17 injury~~[, or]~~ or

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



1 (b) Intentionally discharges a firearm in a populated
2 area, in a residential area, or within the boundaries
3 or in the direction of any road, street, or highway;
4 provided that the provisions of this paragraph shall
5 not apply to any person who discharges a firearm upon
6 a target range for the purpose of the target shooting
7 done in compliance with all laws and regulations
8 applicable thereto.

9 [~~3~~] (2) Reckless endangering in the second degree is a
10 misdemeanor."

11 SECTION 28. Section 707-716, Hawaii Revised Statutes, is
12 amended by amending subsection (1) to read as follows:

13 "(1) A person commits the offense of terroristic
14 threatening in the first degree if the person commits
15 terroristic threatening:

16 (a) By threatening another person on more than one
17 occasion for the same or a similar purpose; or

18 (b) By threats made in a common scheme against different
19 persons; or

20 (c) Against a public servant~~[, including]~~ arising out of
21 the performance of the public servant's official
22 duties. For the purposes of this section, "public



1 servant" includes but is not limited to an educational
2 worker~~[, who for the purposes of this section shall~~
3 ~~mean an administrator, specialist, counselor, teacher,~~
4 ~~or other employee of the department of education, or a~~
5 ~~volunteer as defined by section 90-1, in a school~~
6 ~~program, activity, or function that is established,~~
7 ~~sanctioned, or approved by the department of~~
8 ~~education, or a person hired by the department of~~
9 ~~education on a contractual basis and engaged in~~
10 ~~carrying out an educational function; or].~~

11 "Educational worker" has the same meaning as in
12 section 707-711.

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

14 SECTION 29. Section 707-730, Hawaii Revised Statutes, is
15 amended by amending subsection (1) to read as follows:

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

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

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



- 1 (c) The person knowingly engages in sexual penetration
2 with a person who is at least fourteen years old but
3 less than sixteen years old; provided that:
- 4 (i) The person is not less than five years older than
5 the minor; and
- 6 (ii) The person is not legally married to the
7 minor[-];
- 8 (d) The person knowingly subjects to sexual penetration
9 another person who is mentally defective; or
- 10 (e) The person knowingly engages in sexual penetration
11 with another person who is mentally incapacitated or
12 physically helpless as a result of the influence of a
13 substance that the actor knowingly caused to be
14 administered to the other person without the other
15 person's consent.

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

19 SECTION 30. Section 707-731, Hawaii Revised Statutes, is
20 amended by amending subsection (1) to read as follows:

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



- 1 (a) The person knowingly subjects another person to an act
2 of sexual penetration by compulsion;
- 3 (b) The person knowingly subjects to sexual penetration
4 another person who is [~~mentally defective,~~] mentally
5 incapacitated[~~7~~] or physically helpless; or
- 6 (c) The person, while employed:
- 7 (i) In a state correctional facility;
- 8 (ii) By a private company providing services at a
9 correctional facility;
- 10 (iii) By a private company providing community-based
11 residential services to persons committed to the
12 director of public safety and having received
13 notice of this statute;
- 14 (iv) By a private correctional facility operating in
15 the State of Hawaii; or
- 16 (v) As a law enforcement officer as defined in
17 section 710-1000(13),
18 knowingly subjects to sexual penetration an imprisoned
19 person, a person confined to a detention facility, a
20 person committed to the director of public safety, a
21 person residing in a private correctional facility
22 operating in the State of Hawaii, or a person in



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

9 SECTION 31. Section 708-801, Hawaii Revised Statutes, is
10 amended to read as follows:

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

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

20 (2) Whether or not they have been issued or delivered,
21 certain written instruments, not including those



1 having a readily ascertained market value, shall be
2 evaluated as follows:

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

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

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

21 (4) When acting intentionally or knowingly with respect to
22 the value of property or services is required to



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

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



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

10 SECTION 32. Section 708-822, Hawaii Revised Statutes, is
11 amended by amending subsection (1) to read as follows:

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

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

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

20 SECTION 33. Section 708-823, Hawaii Revised Statutes, is
21 amended by amending subsection (1) to read as follows:



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

5 SECTION 34. Section 708-830, Hawaii Revised Statutes, is
6 amended to read as follows:

7 "**§708-830 Theft.** A person commits theft if the person
8 does any of the following:

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

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

13 (2) Property obtained or control exerted through
14 deception. A person obtains, or exerts control over,
15 the property of another by deception with intent to
16 deprive the other of the property.

17 (3) Appropriation of property. A person obtains, or
18 exerts control over, the property of another that the
19 person knows to have been lost or mislaid or to have
20 been delivered under a mistake as to the nature or
21 amount of the property, the identity of the recipient,
22 or other facts, and, with the intent to deprive the



1 owner of the property, the person fails to take
2 reasonable measures to discover and notify the owner.

3 (4) Obtaining services by deception. A person
4 intentionally obtains services, known by the person to
5 be available only for compensation, by deception,
6 false token, or other means to avoid payment for the
7 services. When compensation for services is
8 ordinarily paid immediately upon the rendering of
9 them, absconding without payment or offer to pay is
10 prima facie evidence that the services were obtained
11 by deception.

12 (5) Diversion of services. Having control over the
13 disposition of services of another to which a person
14 is not entitled, the person intentionally diverts
15 those services to the person's own benefit or to the
16 benefit of a person not entitled thereto.

17 (6) Failure to make required disposition of funds.
18 (a) A person intentionally obtains property from
19 anyone upon an agreement, or subject to a known
20 legal obligation, to make specified payment or
21 other disposition, whether from the property or
22 its proceeds or from the person's own property



1 reserved in equivalent amount, and deals with the
2 property as the person's own and fails to make
3 the required payment or disposition. It does not
4 matter that it is impossible to identify
5 particular property as belonging to the victim at
6 the time of the defendant's failure to make the
7 required payment or disposition. A person's
8 status as an officer or employee of the
9 government or a financial institution is prima
10 facie evidence that the person knows the person's
11 legal obligations with respect to making payments
12 and other dispositions. If the officer or
13 employee fails to pay or account upon lawful
14 demand, or if an audit reveals a falsification of
15 accounts, it shall be prima facie evidence that
16 the officer or employee has intentionally dealt
17 with the property as the officer's or employee's
18 own.

19 (b) A person obtains personal services from an
20 employee upon agreement or subject to a known
21 legal obligation to make a payment or other
22 disposition of funds to a third person on account



1 of the employment, and the person intentionally
2 fails to make the payment or disposition at the
3 proper time.

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

13 (8) Shoplifting.

14 (a) A person conceals or takes possession of the
15 goods or merchandise of any store or retail
16 establishment, with intent to defraud.

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

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



1 The unaltered price or name tag or other marking on
2 goods or merchandise, duly identified photographs or
3 photocopies thereof, or printed register receipts[7]
4 shall be prima facie evidence of value and ownership
5 of such goods or merchandise. Photographs of the
6 goods or merchandise involved, duly identified in
7 writing by the arresting police officer as accurately
8 representing such goods or merchandise, shall be
9 deemed competent evidence of the goods or merchandise
10 involved and shall be admissible in any proceedings,
11 hearings, and trials for shoplifting[7] to the same
12 extent as the goods or merchandise themselves."

13 SECTION 35. Section 708-832, Hawaii Revised Statutes, is
14 amended by amending subsection (1) to read as follows:

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

17 (a) Of property or services the value of which exceeds
18 \$100; or

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



1 SECTION 36. Section 708-835.5, Hawaii Revised Statutes, is
2 amended by amending subsection (1) to read as follows:

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

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

14 SECTION 37. Chapter 708, Hawaii Revised Statutes, is
15 amended by adding two new sections to be appropriately
16 designated and to read as follows:

17 "§708- _____ Burglary offenses; intent to commit therein a
18 crime against a person or against property rights. A person
19 engages in conduct "with intent to commit therein a crime
20 against a person or against property rights" if the person
21 formed the intent to commit within the building a crime against



1 a person or property rights before, during, or after entering
2 the building unlawfully.

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 38. Section 708-836.5, Hawaii Revised Statutes, is
19 amended to read as follows:

20 "[+]§708-836.5[+] **Unauthorized entry into motor vehicle[-]**
21 **in the first degree.** (1) A person commits the offense of
22 unauthorized entry into motor vehicle in the first degree if the



1 person intentionally or knowingly enters or remains unlawfully
2 in a motor vehicle without being invited, licensed, or otherwise
3 authorized to enter or remain within the vehicle with the intent
4 to commit a crime against a person or against property rights.

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

7 SECTION 39. Chapter 708, Hawaii Revised Statutes, is
8 amended by adding a new section to be appropriately designated
9 and to read as follows:

10 "§708- Unauthorized entry into motor vehicle in the
11 second degree. (1) A person commits the offense of
12 unauthorized entry into a motor vehicle in the second degree if
13 the person intentionally or knowingly enters into a motor
14 vehicle without being invited, licensed, or otherwise authorized
15 to do so.

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

18 SECTION 40. Section 708-840, 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 first
21 degree if, in the course of committing theft[+] or non-
22 consensual taking of a motor vehicle:



- 1 (a) The person attempts to kill another[~~7~~] or
2 intentionally or knowingly inflicts or attempts to
3 inflict serious bodily injury upon another; or
- 4 (b) The person is armed with a dangerous instrument and:
5 (i) The person uses force against the person of
6 anyone present with intent to overcome that
7 person's physical resistance or physical power of
8 resistance; or
9 (ii) The person threatens the imminent use of force
10 against the person of anyone who is present with
11 intent to compel acquiescence to the taking of or
12 escaping with the property."

13 SECTION 41. Section 708-841, Hawaii Revised Statutes, is
14 amended by amending subsection (1) to read as follows:

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

- 18 (a) The person uses force against the person of anyone
19 present with the intent to overcome that person's
20 physical resistance or physical power of resistance;
- 21 (b) The person threatens the imminent use of force against
22 the person of anyone who is present with intent to



1 compel acquiescence to the taking of or escaping with
2 the property; or

3 (c) The person recklessly inflicts serious bodily injury
4 upon another."

5 SECTION 42. Section 708-842, Hawaii Revised Statutes, is
6 amended to read as follows:

7 "**§708-842 Robbery; "in the course of committing a theft."**

8 An act shall be deemed "in the course of committing a theft or
9 non-consensual taking of a motor vehicle" if it occurs in an
10 attempt to commit theft[7] or non-consensual taking of a motor
11 vehicle, in the commission of theft[7] or non-consensual taking
12 of a motor vehicle, or in the flight after the attempt or
13 commission."

14 SECTION 43. Section 708-8100, Hawaii Revised Statutes, is
15 amended by amending subsection (2) to read as follows:

16 "(2) Fraudulent use of a credit card is a class C felony
17 if the value of all money, goods, services, and other things of
18 value obtained or attempted to be obtained exceeds \$300 in any
19 six-month period. For purposes of this section, each separate
20 use of a credit card that exceeds \$300 can be charged as a
21 separate incident."



1 SECTION 44. Section 709-904, Hawaii Revised Statutes, is
2 amended by amending subsection (3) to read as follows:

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

5 SECTION 45. Section 709-906, Hawaii Revised Statutes, is
6 amended to read as follows:

7 "**§709-906 Abuse of family or household members; penalty.**

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

14 For the purposes of this section, "family or household
15 member" means spouses or reciprocal beneficiaries, former
16 spouses or reciprocal beneficiaries, persons who have a child in
17 common, parents, children, persons related by consanguinity, and
18 persons jointly residing or formerly residing in the same
19 dwelling unit.

20 (2) Any police officer, with or without a warrant, may
21 arrest a person if the officer has reasonable grounds to believe
22 that the person is physically abusing, or has physically abused,



1 a family or household member and that the person arrested is
2 guilty thereof.

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

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

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

16 (b) Where the police officer has reasonable grounds to
17 believe that there is probable danger of further
18 physical abuse or harm being inflicted by one person
19 upon a family or household member, the police officer
20 lawfully may order the person to leave the premises
21 for a period of separation of twenty-four hours,
22 during which time the person shall not initiate any



1 contact, either by telephone or in person, with the
2 family or household member; provided that the person
3 is allowed to enter the premises with police escort to
4 collect any necessary personal effects;

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

13 (d) All persons who are ordered to leave as stated above
14 shall be given a written warning citation stating the
15 date, time, and location of the warning and stating
16 the penalties for violating the warning. A copy of
17 the warning citation shall be retained by the police
18 officer and attached to a written report which shall
19 be submitted in all cases. A third copy of the
20 warning citation shall be given to the abused person;

21 (e) If the person so ordered refuses to comply with the
22 order to leave the premises or returns to the premises



1 before the expiration of the period of separation, or
2 if the person so ordered initiates any contact with
3 the abused person, the person shall be placed under
4 arrest for the purpose of preventing further physical
5 abuse or harm to the family or household member; and

6 (f) The police officer may seize all firearms and
7 ammunition that the police officer has reasonable
8 grounds to believe were used or threatened to be used
9 in the commission of an offense under this section.

10 (5) Abuse of a family or household member and refusal to
11 comply with the lawful order of a police officer under
12 subsection (4) are misdemeanors and the person shall be
13 sentenced as follows:

14 (a) For the first offense the person shall serve a minimum
15 jail sentence of forty-eight hours; and

16 (b) For a second offense that occurs within one year of
17 the first conviction, the person shall be termed a
18 "repeat offender" and serve a minimum jail sentence of
19 thirty days.

20 Upon conviction and sentencing of the defendant, the court shall
21 order that the defendant immediately be incarcerated to serve
22 the mandatory minimum sentence imposed; provided that the



1 defendant may be admitted to bail pending appeal pursuant to
2 chapter 804. The court may stay the imposition of the sentence
3 if special circumstances exist.

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

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

15 (8) Where the physical abuse consists of intentionally or
16 knowingly impeding the normal breathing or circulation of the
17 blood of the family or household member by applying pressure on
18 the throat or the neck, abuse of a family or household member is
19 a class C felony.

20 [~~+8~~] (9) Any police officer who arrests a person pursuant
21 to this section shall not be subject to any civil or criminal
22 liability; provided that the police officer acts in good faith,



1 upon reasonable belief, and does not exercise unreasonable force
2 in effecting the arrest.

3 [~~9~~] (10) The family or household member who has been
4 physically abused or harmed by another person may petition the
5 family court, with the assistance of the prosecuting attorney of
6 the applicable county, for a penal summons or arrest warrant to
7 issue forthwith or may file a criminal complaint through the
8 prosecuting attorney of the applicable county.

9 [~~10~~] (11) The respondent shall be taken into custody and
10 brought before the family court at the first possible
11 opportunity. The court may dismiss the petition or hold the
12 respondent in custody, subject to bail. Where the petition is
13 not dismissed, a hearing shall be set.

14 [~~11~~] (12) This section shall not operate as a bar
15 against prosecution under any other section of this Code in lieu
16 of prosecution for abuse of a family or household member.

17 [~~12~~] (13) It shall be the duty of the prosecuting
18 attorney of the applicable county to assist any victim under
19 this section in the preparation of the penal summons or arrest
20 warrant.



1 [~~(13)~~] (14) This section shall not preclude the physically
2 abused or harmed family or household member from pursuing any
3 other remedy under law or in equity.

4 [~~(14)~~] (15) When a person is ordered by the court to
5 undergo any domestic violence intervention, that person shall
6 provide adequate proof of compliance with the court's order.
7 The court shall order a subsequent hearing at which the person
8 is required to make an appearance, on a date certain, to
9 determine whether the person has completed the ordered domestic
10 violence intervention. The court may waive the subsequent
11 hearing and appearance where a court officer has established
12 that the person has completed the intervention ordered by the
13 court."

14 SECTION 46. Section 710-1040, Hawaii Revised Statutes, is
15 amended to read as follows:

16 "**§710-1040 Bribery[+] in the first degree.** (1) A person
17 commits the offense of bribery in the first degree if:

18 (a) The person confers, or offers or agrees to confer,
19 directly or indirectly, any pecuniary benefit upon a
20 public servant with the intent to influence the public
21 servant's vote, opinion, judgment, exercise of



1 discretion, or other action in the public servant's
2 official capacity; or

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

9 (2) It is a defense to a prosecution under subsection (1)
10 that the accused conferred or agreed to confer the pecuniary
11 benefit as a result of extortion or coercion.

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

17 (4) Bribery in the first degree is a class [E] B felony.
18 A person convicted of violating this section, notwithstanding
19 any law to the contrary, shall not be eligible for a deferred
20 acceptance of guilty plea or nolo contendere plea under chapter
21 853."



1 SECTION 47. Chapter 710, Hawaii Revised Statutes, is
2 amended by adding a new section to be appropriately designated
3 and to read as follows:

4 "§710- Bribery in the second degree. (1) A person
5 commits the offense of bribery in the second degree if the
6 person:

7 (a) Directly or indirectly gives, offers, or promises any
8 pecuniary benefit to any public servant for or because
9 of any official act performed or to be performed by
10 that public servant otherwise than as provided by law
11 for the proper discharge of official duty; or

12 (b) Being a public servant, directly or indirectly
13 demands, seeks, knowingly receives, knowingly accepts,
14 or knowingly agrees to receive or accept any pecuniary
15 benefit personally for or because of any official act
16 performed or to be performed by the public servant,
17 otherwise than as provided by law for the proper
18 discharge of official duty.

19 (2) It is a defense to a prosecution under subsection (1)
20 that the defendant conferred or agreed to confer the pecuniary
21 benefit as a result of extortion or coercion.



1 (3) For purposes of this section, "public servant"
2 includes, in addition to persons who occupy the position of
3 public servant as defined in section 710-1000(15), former public
4 servants and persons who have been elected, appointed, or
5 designated to become a public servant although not yet occupying
6 that position.

7 (4) This section shall not apply to political campaign
8 contributions that comply with state law.

9 (5) Bribery in the second degree is a class C felony. A
10 person convicted of violating this section, notwithstanding any
11 law to the contrary, shall not be eligible for a deferred
12 acceptance of guilty plea or nolo contendere plea under chapter
13 853."

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

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

19 (a) Trespasses on property for the purpose of subjecting
20 anyone to eavesdropping or other surveillance in a
21 private place;



1 (b) Peers or peeps into a window or other opening of a
2 dwelling or other structure adapted for sojourn or
3 overnight accommodations for the purpose of spying on
4 the occupant thereof or invading the privacy of
5 another person with a lewd or unlawful purpose, under
6 circumstances in which a reasonable person in the
7 dwelling or other structure would not expect to be
8 observed;

9 (c) Trespasses on property for the sexual gratification of
10 the actor;

11 [~~(b)~~] (d) Installs or uses, or both, in any private place,
12 without consent of the person or persons entitled to
13 privacy therein, any means or device for observing,
14 recording, amplifying, or broadcasting sounds or
15 events in that place [~~other than~~], including another
16 person in a stage of undress or sexual activity;

17 [~~(e)~~] (e) Installs or uses outside a private place any
18 device for hearing, recording, amplifying, or
19 broadcasting sounds originating in that place which
20 would not ordinarily be audible or comprehensible
21 outside, without the consent of the person or persons
22 entitled to privacy therein;



1 ~~(d)~~ (f) Covertly records or broadcasts an image of
2 another person's intimate area underneath clothing, by
3 use of any device, and that image is taken while that
4 person is in a public place and without that person's
5 consent;

6 ~~(e)~~ (g) Intercepts, without the consent of the sender or
7 receiver, a message or photographic image by
8 telephone, telegraph, letter, electronic transmission,
9 or other means of communicating privately; but this
10 paragraph does not apply to:

11 (i) Overhearing of messages through a regularly
12 installed instrument on a telephone party line or
13 an extension; or

14 (ii) Interception by the telephone company, electronic
15 mail account provider, or telephone or electronic
16 mail subscriber incident to enforcement of
17 regulations limiting use of the facilities or
18 incident to other operation and use;

19 ~~(f)~~ (h) Divulges, without the consent of the sender or
20 the receiver, the existence or contents of any message
21 or photographic image by telephone, telegraph, letter,
22 electronic transmission, or other means of



1 communicating privately, if the accused knows that the
2 message or photographic image was unlawfully
3 intercepted or if the accused learned of the message
4 or photographic image in the course of employment with
5 an agency engaged in transmitting it; or

6 [~~g~~] (i) Knowingly possesses materials created under
7 circumstances prohibited in section 711-1110.9."

8 SECTION 49. Chapter 712, part IV, Hawaii Revised Statutes,
9 is amended by adding three new sections to be appropriately
10 designated and to read as follows:

11 "**§712-A Methamphetamine trafficking in the first degree.**

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

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

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



1 (c) Distributes methamphetamine in any amount to a minor;
2 or

3 (d) Manufactures methamphetamine in any amount.

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

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

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

20 (b) If the person has two prior convictions for
21 methamphetamine trafficking pursuant to this section
22 or section 712-B, the mandatory minimum term of



1 imprisonment shall be not less than thirteen years,
2 four months and not greater than twenty years; or
3 (c) If the person has three or more prior convictions for
4 methamphetamine trafficking pursuant to this section
5 or section 712-B, the mandatory minimum term of
6 imprisonment shall be twenty years.

7 **§712-B Methamphetamine trafficking in the second degree.**

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

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

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

21 (a) If the person has one prior conviction for
22 methamphetamine trafficking pursuant to this section



1 or section 712-A, the mandatory minimum term of
2 imprisonment shall be not less than three years, four
3 months and not greater than six years, eight months;

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

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

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

21 SECTION 50. Section 712-1241, Hawaii Revised Statutes, is
22 amended by amending subsection (1) to read as follows:



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

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

5 (i) One ounce or more, containing [~~methamphetamine,~~
6 heroin, morphine, or cocaine or any of their
7 respective salts, isomers, and salts of isomers;
8 or

9 (ii) One and one-half ounce or more, containing one or
10 more of any of the other dangerous drugs[+]
11 except methamphetamine; or

12 (b) Distributes, except for methamphetamine [~~as provided~~
13 ~~in section 712-1240.6~~]:

14 (i) Twenty-five or more capsules, tablets, ampules,
15 dosage units, or syrettes containing one or more
16 dangerous drugs; or

17 (ii) One or more preparations, compounds, mixtures, or
18 substances of an aggregate weight of:

19 (A) One-eighth ounce or more, containing heroin,
20 morphine, or cocaine or any of their
21 respective salts, isomers, and salts of
22 isomers; or



- 1 (B) Three-eighths ounce or more, containing any
2 other dangerous drug;
- 3 (c) Distributes any dangerous drug in any amount to a
4 minor except for methamphetamine [~~as provided in~~
5 ~~section 712-1240.6~~]; or
- 6 (d) Manufactures a dangerous drug in any amount, except
7 for methamphetamine [~~as provided in section 712-~~
8 ~~1240.6~~]; provided that this subsection shall not apply
9 to any person registered under section 329-32."

10 SECTION 51. Section 712-1240.6, Hawaii Revised Statutes,
11 is repealed.

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

20 (2) ~~The manufacture, distribution, or dispensing of or~~
21 ~~possession with intent to manufacture, distribute, or dispense~~
22 ~~one or more preparations, compounds, mixtures, or substances of~~



1 ~~an aggregate weight of one eighth ounce or more of~~
2 ~~methamphetamine, or any of its salts, isomers, and salts of~~
3 ~~isomers is a class A felony with a mandatory minimum prison term~~
4 ~~of five years; provided however:~~

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

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



1 ~~fine not to exceed \$20,000,000 if the defendant is~~
2 ~~other than an individual.~~

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

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

19 ~~(b) If the defendant has been convicted of any felony drug~~
20 ~~offense prior to conviction of the offense under this~~
21 ~~section, conviction under this section shall be~~
22 ~~treated as a class A felony, with a mandatory minimum~~



1 ~~prison term of eight years and a fine not to exceed~~
2 ~~\$4,000,000 if the defendant is an individual, or a~~
3 ~~fine not to exceed \$10,000,000 if the defendant is~~
4 ~~other than an individual.~~

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

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

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

21 (b) ~~Any other person injured as a result of the~~
22 ~~manufacture, distribution, or dispensing of~~



1 ~~methamphetamine, or any of its salts, isomers, and~~
2 ~~salts of isomers, by the defendant."]~~

3 SECTION 52. This Act does not affect rights and duties
4 that matured, penalties that were incurred, and proceedings that
5 were begun, before its effective date.

6 SECTION 53. In codifying the new sections added by section
7 15 and 49 of this Act, the revisor of statutes shall substitute
8 appropriate section numbers for the letters used in designating
9 the new sections in this Act.

10 SECTION 54. Statutory material to be repealed is bracketed
11 and stricken. New statutory material is underscored.

12 SECTION 55. This Act shall take effect upon its approval.

13

INTRODUCED BY: _____