

PROPOSED

HOUSE OF REPRESENTATIVES
TWENTY-THIRD LEGISLATURE, 2006
STATE OF HAWAII

H.B. NO. 3256
H.D. 1
S.D. 1

A BILL FOR AN ACT

RELATING TO THE PENAL CODE.

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

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

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

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

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



1 applicable Diagnostic and Statistical Manual and
2 Addiction Severity Index;
3 (c) The court has determined that the offense for which
4 the person is being sentenced is related to the
5 person's substance abuse dependency or addiction;
6 (d) The court has determined that the person is genuinely
7 motivated to obtain and maintain substance abuse
8 treatment, based upon consideration of the person's
9 history, including whether substance abuse treatment
10 has previously been afforded to the person, and an
11 appraisal of the person's current circumstances and
12 attitude; and
13 (e) Except for those persons directed to substance abuse
14 treatment under the supervision of the drug court, the
15 person presents a proposal to receive substance abuse
16 treatment in accordance with the treatment plan
17 prepared by a certified substance abuse counselor
18 through a substance abuse treatment program that
19 includes an identified source of payment for the
20 treatment program.
21 (2) A person eligible under subsection (1) may be
22 sentenced to probation to undergo and complete a substance abuse

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

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



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

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

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

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

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



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

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

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

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

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

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

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

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

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

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1 otherwise than as provided by law for the proper
2 discharge of official duty.

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

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

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

14 (5) Bribery in the second degree is a class C felony. A
15 person convicted of violating this section, notwithstanding any
16 law to the contrary, shall not be eligible for a deferred
17 acceptance of guilty plea or nolo contendere plea under chapter
18 853."

19 SECTION 5. Chapter 712, part IV, Hawaii Revised Statutes,
20 is amended by adding three new sections to be appropriately
21 designated and to read as follows:



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1 "§712-A Methamphetamine trafficking in the first degree.

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

4 (a) Possesses one or more preparations, compounds,
5 mixtures, or substances of an aggregate weight of one
6 ounce or more containing methamphetamine or any of its
7 salts, isomers, and salts of isomers; or

8 (b) Distributes one or more preparations, compounds,
9 mixtures, or substances of an aggregate weight of
10 one-eighth ounce or more containing methamphetamine or
11 any of its salts, isomers, and salts of isomers; or

12 (c) Distributes methamphetamine in any amount to a minor;
13 or

14 (d) Manufactures methamphetamine in any amount.

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

18 (3) Notwithstanding sections 706-620(2), 706-640, 706-641,
19 706-659, 706-669, and any other law to the contrary, a person
20 convicted of methamphetamine trafficking in the first degree
21 shall be sentenced to an indeterminate term of imprisonment of
22 twenty years with a mandatory minimum term of imprisonment of

1 not less than two years and not greater than eight years and a
2 fine not to exceed \$20,000,000; provided that:

3 (a) If the person has one prior conviction for
4 methamphetamine trafficking pursuant to this section
5 or section 712-B, the mandatory minimum term of
6 imprisonment shall be not less than six years, eight
7 months and not greater than thirteen years, four
8 months;

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

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

18 **§712-B Methamphetamine trafficking in the second degree.**

19 (1) A person commits the offense of methamphetamine trafficking
20 in the second degree if the person knowingly distributes
21 methamphetamine in any amount.

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

4 (3) Notwithstanding sections 706-620, 706-640, 706-641,
5 706-660, 706-669, and any other law to the contrary, a person
6 convicted of methamphetamine trafficking in the second degree
7 shall be sentenced to an indeterminate term of imprisonment of
8 ten years with a mandatory minimum term of imprisonment of not
9 less than one year and not greater than four years and a fine
10 not to exceed \$10,000,000; provided that:

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

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

21 (c) If the person has three or more prior convictions for
22 methamphetamine trafficking pursuant to this section



1 or section 712-A, the mandatory minimum term of
2 imprisonment shall be ten years.

3 **§712-C Methamphetamine trafficking; restitution and**
4 **reimbursement.** When sentencing a defendant convicted of
5 methamphetamine trafficking pursuant to section 712-A or 712-B,
6 the court may order restitution or reimbursement to the State or
7 appropriate county government for the cost incurred for any
8 cleanup associated with the manufacture or distribution of
9 methamphetamine and to any other person injured as a result of
10 the manufacture or distribution of methamphetamine."

11 SECTION 6. Section 704-401, Hawaii Revised Statutes, is
12 amended to read as follows:

13 "**§704-401 Evidence of physical or mental disease,**
14 **disorder, or defect admissible when relevant to state of mind.**
15 Evidence that the defendant [~~suffered from~~] was affected by a
16 physical or mental disease, disorder, or defect is admissible
17 whenever it is relevant to prove that the defendant did or did
18 not have a state of mind [~~which~~] that is required to establish
19 an element of the offense."

20 SECTION 7. Section 704-404, Hawaii Revised Statutes, is
21 amended as follows:

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



1 "(1) Whenever the defendant has filed a notice of
2 intention to rely on the defense of physical or mental disease,
3 disorder, or defect excluding responsibility, or there is reason
4 to doubt the defendant's fitness to proceed, or reason to
5 believe that the physical or mental disease, disorder, or defect
6 of the defendant will or has become an issue in the case, the
7 court may immediately suspend all further proceedings in the
8 prosecution. If a trial jury has been empanelled, it shall be
9 discharged or retained at the discretion of the court. The
10 [~~dismissal~~] discharge of the trial jury shall not be a bar to
11 further prosecution.

12 (2) Upon suspension of further proceedings in the
13 prosecution, the court shall appoint three qualified examiners
14 in felony cases and one qualified examiner in nonfelony cases to
15 examine and report upon the physical and mental condition of the
16 defendant. In felony cases the court shall appoint at least one
17 psychiatrist and at least one licensed psychologist. The third
18 member may be [~~either~~] a psychiatrist, licensed psychologist, or
19 qualified physician. One of the three shall be a psychiatrist
20 or licensed psychologist designated by the director of health
21 from within the department of health. In nonfelony cases the
22 court may appoint either a psychiatrist or a licensed



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1 psychologist. All examiners shall be appointed from a list of
2 certified examiners as determined by the department of health.
3 The court, in appropriate circumstances, may appoint an
4 additional examiner or examiners. The examination may be
5 conducted on an out-patient basis or, in the court's discretion,
6 when necessary the court may order the defendant to be committed
7 to a hospital or other suitable facility for the purpose of the
8 examination for a period not exceeding thirty days, or such
9 longer period as the court determines to be necessary for the
10 purpose. The court may direct that one or more qualified
11 physicians or psychologists retained by the defendant be
12 permitted to witness [~~and participate in~~] the examination. As
13 used in this section, the term "licensed psychologist" includes
14 psychologists exempted from licensure by section 465-3(a)(3).

15 (3) [~~In such examination any method may be employed which~~]
16 An examination performed under this section may employ any
17 method that is accepted by the professions of medicine or
18 psychology for the examination of those alleged to be [~~suffering~~
19 ~~from~~] affected by a physical or mental disease, disorder, or
20 defect; provided that each examiner shall form and render
21 diagnoses and opinions upon the physical and mental condition of
22 the defendant independently from the other examiners, and the



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1 examiners [~~may~~], upon approval of the court, may secure the
2 services of clinical psychologists and other medical or
3 paramedical specialists to assist in the examination and
4 diagnosis.

5 (4) The report of the examination shall include the
6 following:

- 7 (a) A description of the nature of the examination;
- 8 (b) A diagnosis of the physical or mental condition of the
9 defendant;
- 10 (c) An opinion as to the defendant's capacity to
11 understand the proceedings against the defendant and
12 to assist in the defendant's own defense;
- 13 (d) An opinion as to the extent, if any, to which the
14 capacity of the defendant to appreciate the
15 wrongfulness of the defendant's conduct or to conform
16 the defendant's conduct to the requirements of law was
17 impaired at the time of the conduct alleged;
- 18 (e) When directed by the court, an opinion as to the
19 capacity of the defendant to have a particular state
20 of mind [~~which~~] that is required to establish an
21 element of the offense charged; and



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1 (f) Where more than one examiner is appointed, a statement
2 that the diagnosis and opinion rendered were arrived
3 at independently of any other examiner, unless there
4 is a showing to the court of a clear need for
5 communication between or among the examiners for
6 clarification. A description of the communication
7 shall be included in the report. After all reports
8 are submitted to the court, examiners may confer
9 without restriction."

10 2. By amending subsection (6) to read:

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

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

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



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

3 **"§704-406 Effect of finding of unfitness to proceed. (1)**

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

17 (2) When the court, on its own motion or upon the
18 application of the director of health, the prosecuting attorney,
19 or the defendant, determines, after a hearing if a hearing is
20 requested, that the defendant has regained fitness to proceed,
21 the penal proceeding shall be resumed. If, however, the court
22 is of the view that so much time has elapsed since the

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1 commitment or [~~conditional~~] release on conditions of the
2 defendant that it would be unjust to resume the proceeding, the
3 court may dismiss the charge and [~~may order~~]:

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

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

12 (c) Subject to the law governing involuntary outpatient
13 treatment, order the defendant to be released on
14 conditions the court determines necessary.

15 (3) Within a reasonable time following any commitment
16 under subsection (1), the director of health shall report to the
17 court on whether the defendant presents a substantial likelihood
18 of becoming fit to proceed in the future. The court, in
19 addition, may appoint a panel of three qualified examiners in
20 felony cases or one qualified examiner in nonfelony cases to
21 make a report. If, following a report, the court determines



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1 that the defendant probably will remain unfit to proceed, the
2 court may dismiss the charge and [~~release~~]:

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

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

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

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

18 (b) Subject to the law governing involuntary civil
19 commitment [~~procedures~~], order the defendant to be
20 committed to the custody of the director of health to
21 be placed in an appropriate institution for detention,
22 care, and treatment."



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1 SECTION 9. Section 704-407, Hawaii Revised Statutes, is
2 amended to read as follows:

3 "§704-407 Special [~~post-commitment or post-conditional~~
4 ~~release~~] hearing following commitment or release on conditions.

5 (1) At any time after commitment as provided in section
6 704-406, the defendant or the defendant's counsel or the
7 director of health may apply for a special post-commitment or
8 post-release hearing. If the application is made by or on
9 behalf of a defendant not represented by counsel, the defendant
10 shall be afforded a reasonable opportunity to obtain counsel,
11 and if the defendant lacks funds to do so, counsel shall be
12 assigned by the court. The application shall be granted only if
13 the counsel for the defendant satisfies the court by affidavit
14 or otherwise that, as an attorney, the counsel has reasonable
15 grounds for a good faith belief that the counsel's client has an
16 objection based upon legal grounds to the charge.

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



1 (3) After the hearing, the court shall rule on any legal
 2 objection raised by the application and [~~may~~], in an appropriate
 3 case, may quash the indictment or other charge, [~~or~~] find it to
 4 be defective or insufficient, or otherwise terminate the
 5 proceedings on the law. In any such case, unless all defects in
 6 the proceedings are promptly cured, the court shall terminate
 7 the commitment or [~~conditional~~] release ordered under section
 8 704-406 and [~~order~~]:

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

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

17 (c) Subject to the law governing involuntary outpatient
 18 treatment, order the defendant to be released on such
 19 conditions as the court deems necessary."

20 SECTION 10. Section 704-408, Hawaii Revised Statutes, is
 21 amended to read as follows:



1 **"§704-408 Determination of irresponsibility.** If the
 2 report of the examiners filed pursuant to section 704-404, or
 3 the report of examiners of the defendant's choice under section
 4 704-409, states that the defendant at the time of the conduct
 5 alleged [~~suffered from~~] was affected by a physical or mental
 6 disease, disorder, or defect [~~which~~] that substantially impaired
 7 the defendant's capacity to appreciate the wrongfulness of the
 8 defendant's conduct or to conform the defendant's conduct to the
 9 requirements of law, the court shall submit the defense of
 10 physical or mental disease, disorder, or defect to the jury or
 11 the trier of fact at the trial of the charge against the
 12 defendant."

13 SECTION 11. Section 704-411, Hawaii Revised Statutes, is
 14 amended to read as follows:

15 **"§704-411 Legal effect of acquittal on the ground of**
 16 **physical or mental disease, disorder, or defect excluding**
 17 **responsibility; commitment; conditional release; discharge;**
 18 **procedure for separate post-acquittal hearing.** (1) When a
 19 defendant is acquitted on the ground of physical or mental
 20 disease, disorder, or defect excluding responsibility, the court
 21 [~~shall~~], on the basis of the report made pursuant to section
 22 704-404, if uncontested, or the medical or psychological



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1 evidence given at the trial or at a separate hearing, shall make
2 an order as follows:

3 (a) The court shall order the defendant to be committed to
4 the custody of the director of health to be placed in
5 an appropriate institution for custody, care, and
6 treatment if the court finds that the defendant
7 [~~presents~~]:

8 (i) Is affected by a physical or mental disease,
9 disorder, or defect;

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

12 (iii) Is not a proper subject for conditional release;
13 provided that the director of health shall place
14 defendants charged with misdemeanors or felonies not
15 involving violence or attempted violence in the least
16 restrictive environment appropriate in light of the
17 defendant's treatment needs and the need to prevent
18 harm to the person confined and others; [~~or~~]

19 (b) The court shall order the defendant to be released on
20 such conditions as the court deems necessary if the
21 court finds that the defendant is affected by physical
22 or mental disease, disorder, or defect and that the



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1 defendant presents a danger to [~~oneself~~] self or
2 others, but that the defendant can be controlled
3 adequately and given proper care, supervision, and
4 treatment if the defendant is released on condition;
5 or

6 (c) The court shall order the defendant discharged [~~from~~
7 ~~custody~~] if the court finds that the defendant is no
8 longer affected by physical or mental disease,
9 disorder, or defect[~~7~~] or, if so affected, that the
10 defendant no longer presents a danger to [~~oneself~~]
11 self or others and is not in need of care,
12 supervision, or treatment.

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

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

20 (a) In nonfelony cases, the court shall appoint a
21 qualified examiner to examine and report upon the
22 physical and mental condition of the defendant. The



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1 court may appoint either a psychiatrist or a licensed
 2 psychologist. The examiner may be designated by the
 3 director of health from within the department of
 4 health. The examiner shall be appointed from a list
 5 of certified examiners as determined by the department
 6 of health. The court, in appropriate circumstances,
 7 may appoint an additional examiner or examiners[-];
 8 and

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

21 To facilitate the examination and the proceedings thereon, the
 22 court may cause the defendant, if not then confined, to be



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

13 (4) Whether the court's order under subsection (1) is made
14 on the basis of the medical or psychological evidence given at
15 the trial, or on the basis of the report made pursuant to
16 section 704-404, or the medical or psychological evidence given
17 at a separate hearing, the burden shall be upon the State to
18 prove, by a preponderance of the evidence, that the defendant is
19 affected by a physical or mental disease, disorder, or defect
20 and may not safely be discharged and that the defendant should
21 be either committed or conditionally released as provided in
22 subsection (1).



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

3 SECTION 12. Section 704-412, Hawaii Revised Statutes, is
4 amended to read as follows:

5 **"§704-412 Committed person; application for conditional**
6 **release or discharge; by the director of health; by the person.**

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



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

18 SECTION 13. Section 704-413, Hawaii Revised Statutes, is
19 amended to read as follows:

20 **"§704-413 Conditional release; application for**
21 **modification or discharge; termination of conditional release**
22 **and commitment.** (1) Any person released ~~[on condition]~~



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1 pursuant to section 704-411 shall continue to receive mental
2 health or other [~~appropriate~~] treatment and care deemed
3 appropriate by the director of health until discharged from
4 conditional release. The person shall follow all prescribed
5 treatments and take all prescribed medications according to the
6 instructions of the person's treating mental health
7 professional. If any mental health professional treating any
8 conditionally released person believes either the person is
9 [~~either~~] not complying with the requirements of this section[7]
10 or there is other evidence that hospitalization is appropriate,
11 the mental health professional shall report the matter to the
12 probation officer of the conditionally released person. The
13 probation officer may order the conditionally released person to
14 be hospitalized for a period not to exceed seventy-two hours if
15 the probation officer has probable cause to believe the person
16 has violated the requirements of this subsection. No person
17 shall be hospitalized beyond the seventy-two hour period, as
18 computed pursuant to section 1-29, unless a hearing has been
19 held pursuant to subsection (3).

20 (2) Any person released [~~on condition~~] pursuant to section
21 704-411 may apply to the court ordering the conditional release
22 for discharge from, or modification of, the order granting



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

17 (3) If, at any time after the order pursuant to section
18 704-411 granting conditional release, the court [~~shall~~
19 ~~determine,~~] determines, after hearing evidence, that:

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



1 (b) For the safety of [~~such~~] the person or others [~~his~~],
2 the person's conditional release should be revoked,
3 the court may forthwith modify the conditions of release or
4 order the person to be committed to the custody of the director
5 of health, subject to discharge or release only in accordance
6 with the procedure prescribed in section 704-412."

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

9 **"§704-414 Procedure upon application for discharge,**
10 **conditional release, or modification of conditions of release.**
11 Upon filing of an application pursuant to section 704-412 for
12 discharge or conditional release, or upon the filing of an
13 application pursuant to section 704-413 for discharge or for
14 modification of conditions of release, the court shall appoint
15 three qualified examiners in felony cases and one qualified
16 examiner in nonfelony cases to examine and report upon the
17 physical and mental condition of the defendant. In felony cases
18 the court shall appoint at least one psychiatrist and at least
19 one licensed psychologist. The third member may be [~~either~~] a
20 psychiatrist, a licensed psychologist, or a qualified physician.
21 One of the three shall be a psychiatrist or licensed
22 psychologist designated by the director of health from within



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1 the department of health. The examiners shall be appointed from
2 a list of certified examiners as determined by the department of
3 health. To facilitate the examination and the proceedings
4 thereon, the court may cause the defendant, if not then
5 confined, to be committed to a hospital or other suitable
6 facility for the purpose of the examination and may direct that
7 qualified physicians or psychologists retained by the defendant
8 be permitted to witness [~~and participate in~~] the examination.

9 The examination and report and the compensation of persons
10 making or assisting in the examination shall be in accord with
11 section 704-404(3), (4)(a) and (b), (6), (7), (8), and (9). As
12 used in this section, the term "licensed psychologist" includes
13 psychologists exempted from licensure by section 465-3(a)(3)."

14 SECTION 15. Section 704-415, Hawaii Revised Statutes, is
15 amended to read as follows:

16 **"§704-415 Disposition of application for discharge,
17 conditional release, or modification of conditions of release.**

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

21 (a) The person is affected by a physical or mental
22 disease, disorder, or defect and the discharge,



1 conditional release, or modification of conditions of
2 release applied for may be granted without danger to
3 the committed or conditionally released person or to
4 the person or property of others[~~7~~]; or

5 (b) The person is no longer affected by a physical or
6 mental disease, disorder, or defect,
7 the court shall grant the application and order the relief. If
8 the court is not so satisfied, it shall promptly order a hearing
9 [~~to determine whether such person may safely be discharged or~~
10 ~~released~~].

11 (2) Any such hearing shall be deemed a civil proceeding
12 and the burden shall be upon the applicant to prove that the
13 person is no longer affected by a physical or mental disease,
14 disorder, or defect or may safely be either released on the
15 conditions applied for or discharged. According to the
16 determination of the court upon the hearing, the person shall
17 [~~thereupon~~] be [~~discharged, or released~~]:

18 (a) Discharged;

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

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

4 SECTION 16. Section 704-416.5, Hawaii Revised Statutes, is
5 amended to read as follows:

6 "~~+~~**\$704-416.5**~~+~~ **Supervision of person on conditional**
7 **release.** (1) Any person hospitalized under this chapter who is
8 subsequently placed on conditional release shall be subject to
9 the supervision of a probation officer until such time as that
10 supervision is terminated by order of the court.

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

15 SECTION 17. Section 706-604, Hawaii Revised Statutes, is
16 amended as follows:

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

18 "(2) The court shall furnish to the defendant or the
19 defendant's counsel and to the prosecuting attorney a copy of
20 the report of any pre-sentence diagnosis or psychological,
21 psychiatric, or other medical examination and afford fair
22 opportunity, if the defendant or the prosecuting attorney so



1 requests, to controvert or supplement them. The court shall
2 amend or order the amendment of the report upon finding that any
3 correction, modification, or addition is needed and, where
4 appropriate, shall require the prompt preparation of an amended
5 report in which material required to be deleted is completely
6 removed or other amendments, including additions, are made."

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

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

15 SECTION 18. Section 706-605, Hawaii Revised Statutes, is
16 amended to read as follows:

17 **"§706-605 Authorized disposition of convicted defendants.**

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



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

3 (b) To pay a fine as authorized by part III and section
4 706-624 [~~of this chapter~~];

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

7 [~~(d) To make restitution in an amount the defendant can~~
8 ~~afford to pay; provided that the court may order any~~
9 ~~restitution to be paid to victims pursuant to section~~
10 ~~706-646 or to the crime victim compensation special~~
11 ~~fund in the event that the victim has been given an~~
12 ~~award for compensation under chapter 351 and, if the~~
13 ~~court orders, in addition to restitution, payment of~~
14 ~~fine in accordance with paragraph (b), the payment of~~
15 ~~restitution and a compensation fee shall have priority~~
16 ~~over the payment of the fine; payment of restitution~~
17 ~~shall have priority over payment of a compensation~~
18 ~~fee; or~~

19 ~~(e)~~ (d) To perform services for the community under the
20 supervision of a governmental agency or benevolent or
21 charitable organization or other community service
22 group or appropriate supervisor; provided that the



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1 convicted person who performs such services shall not
2 be deemed to be an employee of the governmental agency
3 or assigned work site for any purpose. All persons
4 sentenced to perform community service shall be
5 screened and assessed for appropriate placement by a
6 governmental agency coordinating public service work
7 placement as a condition of sentence.

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

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

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

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

21 (6) The court shall impose a compensation fee upon every
22 person convicted of a criminal offense pursuant to section



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1 351-62.6; provided that the court shall waive the imposition of
2 a compensation fee if it finds that the defendant is unable to
3 pay the compensation fee. When a defendant is ordered to make
4 payments in addition to the compensation fee, payments by the
5 defendant shall be made in the following order of priority:

6 (a) Restitution;

7 (b) Crime victim compensation fee;

8 (c) Probation services fee;

9 (d) Other fees; and

10 (e) Fines.

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

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



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1 SECTION 19. Section 706-622.5, Hawaii Revised Statutes, is
2 amended by amending subsection (1) to read as follows:

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

19 (a) The court has determined that the person is nonviolent
20 after reviewing the person's criminal history, the
21 factual circumstances of the offense for which the



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1 person is being sentenced, and any other relevant
2 information;

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

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

16 SECTION 20. Section 706-623, Hawaii Revised Statutes, is
17 amended by amending subsection (1) to read as follows:

18 "(1) When the court has sentenced a defendant to be placed
19 on probation, the period of probation shall be as follows,
20 unless the court enters the reason therefor on the record and
21 sentences the defendant to a shorter period of probation:

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

- 1 (b) Five years upon conviction of a class B or class C
- 2 felony;
- 3 (c) One year upon conviction of a misdemeanor; except that
- 4 upon a conviction under section 586-4, 586-11, or
- 5 709-906, the court may sentence the defendant to a
- 6 period of probation not exceeding two years; or
- 7 (d) Six months upon conviction of a petty misdemeanor[-];
- 8 provided that up to one year may be imposed upon a
- 9 finding of good cause.

10 The court, on application of a probation officer, on application
 11 of the defendant, or on its own motion, may discharge the
 12 defendant at any time. Prior to granting early discharge, the
 13 court shall afford the prosecuting attorney an opportunity to be
 14 heard. The terms of probation provided in this part, other than
 15 in this section, shall not apply to sentences of probation
 16 imposed under section 706-606.3."

17 SECTION 21. Section 706-624, Hawaii Revised Statutes, is
 18 amended to read as follows:

19 **"§706-624 Conditions of probation.** (1) Mandatory
 20 conditions. The court shall provide, as an explicit condition
 21 of a sentence of probation:



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- 1 (a) That the defendant not commit another federal or state
- 2 crime or engage in criminal conduct in any foreign
- 3 jurisdiction or under military jurisdiction that would
- 4 constitute a crime under Hawaii law during the term of
- 5 probation;
- 6 (b) That the defendant report to a probation officer as
- 7 directed by the court or the probation officer;
- 8 (c) That the defendant remain within the jurisdiction of
- 9 the court, unless granted permission to leave by the
- 10 court or a probation officer;
- 11 (d) That the defendant notify a probation officer prior to
- 12 any change in address or employment;
- 13 (e) That the defendant notify a probation officer promptly
- 14 if arrested or questioned by a law enforcement
- 15 officer; [~~and~~]
- 16 (f) That the defendant permit a probation officer to visit
- 17 the defendant at the defendant's home or elsewhere as
- 18 specified by the court[~~-~~]; and
- 19 (g) That the defendant make restitution for losses
- 20 suffered by the victim or victims if the court has
- 21 ordered restitution pursuant to section 706-646.

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

8 (a) Serve a term of imprisonment not exceeding [~~one year~~
 9 ~~in felony cases, and not exceeding~~] two years in class
 10 A felony cases under part IV of chapter 712, eighteen
 11 months in class B felony cases, one year in class C
 12 felony cases, six months in misdemeanor cases[+], and
 13 five days in petty misdemeanor cases; provided that
 14 notwithstanding any other provision of law, any order
 15 of imprisonment under this subsection that provides
 16 for prison work release shall require the defendant to
 17 pay thirty per cent of the defendant's gross pay
 18 earned during the prison work release period to
 19 satisfy any restitution order. The payment shall be
 20 handled by the adult probation division and shall be
 21 paid to the victim on a monthly basis;

1 (b) Perform a specified number of hours of services to the
2 community as described in section ~~[706-605(1)(e)]~~
3 706-605(1)(d);

4 (c) Support the defendant's dependents and meet other
5 family responsibilities;

6 (d) Pay a fine imposed pursuant to section 706-605(1)(b);
7 ~~[(e) Make restitution as specified in section 706-~~
8 ~~605(1)(d)]~~;

9 ~~+(f)]~~ (e) Work conscientiously at suitable employment or
10 pursue conscientiously a course of study or vocational
11 training that will equip the defendant for suitable
12 employment;

13 ~~+(g)]~~ (f) Refrain from engaging in a specified occupation,
14 business, or profession bearing a reasonably direct
15 relationship to the conduct constituting the crime or
16 engage in the specified occupation, business, or
17 profession only to a stated degree or under stated
18 circumstances;

19 ~~+(h)]~~ (g) Refrain from frequenting specified kinds of
20 places or from associating unnecessarily with
21 specified persons, including but not limited to the
22 victim of the crime, any witnesses, regardless of



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1 whether they actually testified in the prosecution,
2 law enforcement officers, co-defendants, or other
3 individuals with whom contact may adversely affect the
4 rehabilitation or reformation of the person convicted;

5 ~~[(i)]~~ (h) Refrain from use of alcohol or any use of
6 narcotic drugs or controlled substances without a
7 prescription;

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

10 ~~[(k)]~~ (j) Undergo available medical ~~[, psychiatric, or~~
11 ~~psychological]~~ or mental health treatment, including
12 treatment for ~~[drug or alcohol]~~ substance abuse
13 dependency, and remain in a specified ~~[institution]~~
14 facility if required for that purpose;

15 ~~[(l)]~~ (k) Reside in a specified place or area or refrain
16 from residing in a specified place or area;

17 ~~[(m)]~~ (l) Submit to periodic urinalysis or other similar
18 testing procedure;

19 ~~[(n)]~~ ~~Satisfy other reasonable conditions as the court may~~
20 ~~impose;~~

21 ~~[(o)]~~ (m) Refrain from entering specified geographical
22 areas without the court's permission; ~~[or~~



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- 1 ~~(p)~~ (n) Refrain from leaving the person's dwelling place
2 except to go to and from the person's place of
3 employment, the office of the person's physician or
4 dentist, the probation office, or ~~[as may be granted]~~
5 any other location as may be approved by the person's
6 probation officer pursuant to court order. As used in
7 this paragraph, "dwelling place" includes the person's
8 yard or, in the case of condominiums, the common
9 elements~~[-]~~;
- 10 (o) Comply with a specified curfew;
- 11 (p) Submit to monitoring by an electronic monitoring
12 device; or
- 13 (q) Satisfy other reasonable conditions as the court may
14 impose.
- 15 (3) Written statement of conditions. The court shall
16 order the defendant at the time of sentencing to sign a written
17 acknowledgement of receipt of conditions of probation. The
18 defendant shall be given a written copy of any requirements
19 imposed pursuant to this section, stated with sufficient
20 specificity to enable the defendant to ~~[guide the defendant's~~
21 ~~self]~~ comply with the conditions accordingly."



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1 SECTION 22. Section 706-643, Hawaii Revised Statutes, is
2 amended by amending subsection (1) to read as follows:

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

8 SECTION 23. Section 706-646, Hawaii Revised Statutes, is
9 amended by amending subsections (2) and (3) to read as follows:

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



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

- 10 (a) Full value of stolen or damaged property, as
- 11 determined by replacement costs of like property, or
- 12 the actual or estimated cost of repair, if repair is
- 13 possible;
- 14 (b) Medical expenses; and
- 15 (c) Funeral and burial expenses incurred as a result of
- 16 the crime."

17 SECTION 24. Section 706-661, Hawaii Revised Statutes, is
 18 amended to read as follows:

19 "~~§706-661 [Sentence of imprisonment for felony, extended]~~
 20 Extended terms~~[.]~~ of imprisonment. [~~In the cases designated in~~
 21 ~~section 706-662,~~] The court may sentence a person who [~~has been~~
 22 ~~convicted of a felony may be sentenced]~~ satisfies the criteria

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1 for any of the categories set forth in section 706-662 to an
2 extended [indeterminate] term of imprisonment[. ~~When ordering~~
3 ~~such a sentence, the court shall impose the maximum length of~~
4 ~~imprisonment which shall be as follows:)], which shall have a~~
5 maximum length as follows:

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

14 In exercising its discretion on whether to impose the
15 extended term of imprisonment or to use other available
16 sentencing options, the court shall consider whether the
17 extended term is necessary for the protection of the public and
18 whether the extended term is necessary in light of the other
19 factors set forth in section 706-606.

20 When ordering an extended term sentence, the court shall
21 impose the maximum length of imprisonment. The minimum length
22 of imprisonment for an extended term sentence under



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1 [+]paragraphs[+] (2), (3), and (4) shall be determined by the
2 Hawaii paroling authority in accordance with section 706-669."

3 SECTION 25. Section 706-662, Hawaii Revised Statutes, is
4 amended to read as follows:

5 "**§706-662 Criteria for extended terms of imprisonment.** A
6 ~~[convicted]~~ defendant ~~[may be subject to]~~ who has been convicted
7 of a felony qualifies for an extended term of imprisonment under
8 section 706-661[-] if the convicted defendant satisfies one or
9 more of the following criteria:

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

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



- 1 (a) The circumstances of the crime show that the
- 2 defendant has knowingly engaged in criminal
- 3 activity as a major source of livelihood; or
- 4 (b) The defendant has substantial income or resources
- 5 not explained to be derived from a source other
- 6 than criminal activity[-];

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

19 (4) The defendant is a multiple offender [~~whose criminal~~
20 ~~actions were so extensive that a sentence of~~
21 ~~imprisonment for an extended term is necessary for~~

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1 ~~protection of the public. The court shall not make~~
2 ~~this finding unless:] in that:~~

3 (a) The defendant is being sentenced for two or more
4 felonies or is already under sentence of
5 imprisonment for felony; or

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

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

17 (a) The defendant attempts or commits any of the
18 following crimes: murder, manslaughter, a sexual
19 offense that constitutes a felony under chapter
20 707, robbery, felonious assault, burglary, or
21 kidnapping; and

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1 (b) The defendant, in the course of committing or
2 attempting to commit the crime, inflicts serious
3 or substantial bodily injury upon a person who
4 is:

5 (i) Sixty years of age or older;

6 (ii) Blind, a paraplegic, or a quadriplegic; or

7 (iii) Eight years of age or younger; and

8 (c) Such disability is known or reasonably should be
9 known to the defendant[-]; or

10 (6) The defendant is a hate crime offender [~~whose~~
11 ~~imprisonment for an extended term is necessary for the~~
12 ~~protection of the public. The court shall not make~~
13 ~~this finding unless:] in that:~~

14 (a) The defendant is convicted of a crime under
15 chapter 707, 708, or 711; and

16 (b) The defendant intentionally selected a victim[-]
17 or, in the case of a property crime, the property
18 that was the object of a crime, because of
19 hostility toward the actual or perceived race,
20 religion, disability, ethnicity, national origin,
21 gender identity or expression, or sexual
22 orientation of any person. For purposes of this



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

11 SECTION 26. Section 706-667, Hawaii Revised Statutes, is
 12 amended to read as follows:

13 **"§706-667 Young adult defendants.** (1) Defined. A young
 14 adult defendant is a person convicted of a crime who, at the
 15 time of [~~sentencing,~~] the offense, is less than twenty-two years
 16 of age and who has not been previously convicted of a felony as
 17 an adult or adjudicated as a juvenile for an offense that would
 18 have constituted a felony had the young adult defendant been an
 19 adult.

20 (2) Specialized correctional treatment. A young adult
 21 defendant who is sentenced to a term of imprisonment [~~which may~~
 22 ~~exceed~~] exceeding thirty days may be committed by the court to

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1 the custody of the department of public safety[7] and shall
2 receive, as far as practicable, such special and individualized
3 correctional and rehabilitative treatment as may be appropriate
4 to the young adult defendant's needs.

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

20 This section shall not apply to the offenses of murder or
21 attempted murder."



1 SECTION 27. Section 707-700, Hawaii Revised Statutes, is
2 amended by amending the definition of "mentally incapacitated"
3 and "sexual penetration" to read:

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

8 "Sexual penetration" means:

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

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

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

21 SECTION 28. Section 707-701, Hawaii Revised Statutes, is
22 amended by amending subsection (1) to read as follows:



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

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

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

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

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

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

14 SECTION 29. Section 707-702, Hawaii Revised Statutes, is
15 amended by amending subsection (1) to read as follows:

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

17 (a) [He] The person recklessly causes the death of another
18 person; or

19 (b) [He] The person intentionally causes another person to
20 commit suicide."

21 SECTION 30. Section 707-711, Hawaii Revised Statutes, is
22 amended by amending subsection (1) to read as follows:



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

3 (a) The person intentionally or knowingly causes
4 substantial bodily injury to another;

5 (b) The person recklessly causes serious or substantial
6 bodily injury to another person;

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

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

14 (e) The person intentionally or knowingly causes bodily
15 injury to an educational worker who is engaged in the
16 performance of duty or who is within an educational
17 facility. For the purposes of this [~~section,~~]

18 paragraph, "educational worker" means: any
19 administrator, specialist, counselor, teacher, or
20 employee of the department of education[~~or~~]; a
21 person who is a volunteer in a school program,
22 activity, or function that is established, sanctioned,

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1 or approved by the department of education; or a
2 person hired by the department of education on a
3 contractual basis and engaged in carrying out an
4 educational function."

5 SECTION 31. Section 707-714, Hawaii Revised Statutes, is
6 amended to read as follows:

7 "**§707-714 Reckless endangering in the second degree.** (1)

8 A person commits the offense of reckless endangering in the
9 second degree if the person [~~engages~~]:

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

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

17 (b) Intentionally discharges a firearm in a populated
18 area, in a residential area, or within the boundaries
19 or in the direction of any road, street, or highway;
20 provided that the provisions of this paragraph shall
21 not apply to any person who discharges a firearm upon
22 a target range for the purpose of the target shooting



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1 done in compliance with all laws and regulations
2 applicable thereto.

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

5 SECTION 32. Section 707-716, Hawaii Revised Statutes, is
6 amended by amending subsection (1) to read as follows:

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

- 10 (a) By threatening another person on more than one
11 occasion for the same or a similar purpose; [~~or~~]
- 12 (b) By threats made in a common scheme against different
13 persons; [~~or~~]
- 14 (c) Against a public servant[~~, including~~] arising out of
15 the performance of the public servant's official
16 duties. For the purposes of this paragraph, "public
17 servant" includes but is not limited to an educational
18 worker[~~, who for the purposes of this section shall~~
19 mean an administrator, specialist, counselor, teacher,
20 or other employee of the department of education, or a
21 volunteer as defined by section 90-1, in a school
22 program, activity, or function that is established,



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~~sanctioned, or approved by the department of
education, or a person hired by the department of
education on a contractual basis and engaged in
carrying out an educational function; or].~~

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

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

SECTION 33. Section 707-730, Hawaii Revised Statutes, is
amended by amending subsection (1) to read as follows:

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

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

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

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

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



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- 1 (c) The person, while employed:
- 2 (i) In a state correctional facility;
- 3 (ii) By a private company providing services at a
- 4 correctional facility;
- 5 (iii) By a private company providing community-based
- 6 residential services to persons committed to the
- 7 director of public safety and having received
- 8 notice of this statute;
- 9 (iv) By a private correctional facility operating in
- 10 the State of Hawaii; or
- 11 (v) As a law enforcement officer as defined in
- 12 section 710-1000(13),
- 13 knowingly subjects to sexual penetration an imprisoned
- 14 person, a person confined to a detention facility, a
- 15 person committed to the director of public safety, a
- 16 person residing in a private correctional facility
- 17 operating in the State of Hawaii, or a person in
- 18 custody; provided that paragraph (b) and this
- 19 paragraph shall not be construed to prohibit
- 20 practitioners licensed under chapter 453, 455, or 460,
- 21 from performing any act within their respective
- 22 practices; and further provided that this paragraph

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1 shall not be construed to prohibit a law enforcement
2 officer from performing a lawful search pursuant to a
3 warrant or exception to the warrant clause."

4 SECTION 35. Section 708-801, Hawaii Revised Statutes, is
5 amended to read as follows:

6 "**§708-801 Valuation of property[+] or services.** Whenever
7 the value of property or services is determinative of the class
8 or grade of an offense, or otherwise relevant to a prosecution,
9 the following shall apply:

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

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

19 (a) The value of an instrument constituting an
20 evidence of debt, such as a check, traveler's
21 check, draft, or promissory note, shall be deemed
22 the amount due or collectible thereon or thereby,



1 that figure ordinarily being the face amount of
2 the indebtedness less any portion thereof [~~which~~]
3 that has been satisfied;

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

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

15 (4) When acting intentionally or knowingly with respect to
16 the value of property or services is required to
17 establish an element of an offense, the value of
18 property or services shall be prima facie evidence
19 that the defendant believed or knew the property or
20 services to be of that value. When acting recklessly
21 with respect to the value of property or services is
22 sufficient to establish an element of an offense, the



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1 value of the property or services shall be prima facie
2 evidence that the defendant acted in reckless
3 disregard of the value.

4 (5) When acting intentionally or knowingly with respect to
5 the value of property or services is required to
6 establish an element of an offense, it is a defense,
7 which reduces the class or grade of the offense to a
8 class or grade of offense consistent with the
9 defendant's state of mind, that the defendant believed
10 the valuation of the property or services to be less.

11 When acting recklessly with respect to the value of
12 property or services is required to establish an
13 element of an offense, it is a defense that the
14 defendant did not recklessly disregard a risk that the
15 property was of the specified value.

16 (6) Amounts involved in thefts committed pursuant to one
17 scheme or course of conduct, whether the property
18 taken be of one person or several persons, may be
19 aggregated in determining the class or grade of the
20 offense. Amounts involved in offenses of criminal
21 property damage committed pursuant to one scheme or
22 course of conduct, whether the property damaged be of



1 one person or several persons, may be aggregated in
2 determining the class or grade of the offense."

3 SECTION 36. Section 708-822, Hawaii Revised Statutes, is
4 amended by amending subsection (1) to read as follows:

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

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

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

13 SECTION 37. Section 708-823, Hawaii Revised Statutes, is
14 amended by amending subsection (1) to read as follows:

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

19 SECTION 38. Section 708-830, Hawaii Revised Statutes, is
20 amended to read as follows:

21 "**§708-830 Theft.** A person commits theft if the person
22 does any of the following:



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- 1 (1) Obtains or exerts unauthorized control over property.
- 2 A person obtains[7] or exerts unauthorized control
- 3 over[7] the property of another with intent to deprive
- 4 the other of the property.
- 5 (2) Property obtained or control exerted through
- 6 deception. A person obtains, or exerts control over,
- 7 the property of another by deception with intent to
- 8 deprive the other of the property.
- 9 (3) Appropriation of property. A person obtains, or
- 10 exerts control over, the property of another that the
- 11 person knows to have been lost or mislaid or to have
- 12 been delivered under a mistake as to the nature or
- 13 amount of the property, the identity of the recipient,
- 14 or other facts, and, with the intent to deprive the
- 15 owner of the property, the person fails to take
- 16 reasonable measures to discover and notify the owner.
- 17 (4) Obtaining services by deception. A person
- 18 intentionally obtains services, known by the person to
- 19 be available only for compensation, by deception,
- 20 false token, or other means to avoid payment for the
- 21 services. When compensation for services is
- 22 ordinarily paid immediately upon the rendering of

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1 them, absconding without payment or offer to pay is
2 prima facie evidence that the services were obtained
3 by deception.

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

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

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



1 government or a financial institution is prima
2 facie evidence that the person knows the person's
3 legal obligations with respect to making payments
4 and other dispositions. If the officer or
5 employee fails to pay or account upon lawful
6 demand, or if an audit reveals a falsification of
7 accounts, it shall be prima facie evidence that
8 the officer or employee has intentionally dealt
9 with the property as the officer's or employee's
10 own.

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

18 (7) Receiving stolen property. A person intentionally
19 receives, retains, or disposes of the property of
20 another, knowing that it has been stolen, with intent
21 to deprive the owner of the property. It is prima
22 facie evidence that a person knows the property to

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1 have been stolen if, being a dealer in property of the
2 sort received, the person acquires the property for a
3 consideration that the person knows is far below its
4 reasonable value.

5 (8) Shoplifting.

6 (a) A person conceals or takes possession of the
7 goods or merchandise of any store or retail
8 establishment, with intent to defraud.

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

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

15 The unaltered price or name tag or other marking on
16 goods or merchandise, duly identified photographs or
17 photocopies thereof, or printed register receipts[7]
18 shall be prima facie evidence of value and ownership
19 of such goods or merchandise. Photographs of the
20 goods or merchandise involved, duly identified in
21 writing by the arresting police officer as accurately
22 representing such goods or merchandise, shall be



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1 deemed competent evidence of the goods or merchandise
2 involved and shall be admissible in any proceedings,
3 hearings, and trials for shoplifting[~~r~~] to the same
4 extent as the goods or merchandise themselves."

5 SECTION 39. Section 708-832, Hawaii Revised Statutes, is
6 amended by amending subsection (1) to read as follows:

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

9 (a) Of property or services the value of which exceeds
10 \$100; or

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

14 SECTION 40. Section 708-835.5, Hawaii Revised Statutes, is
15 amended by amending subsection (1) to read as follows:

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

18 (a) Having in the person's possession a live animal of the
19 bovine, equine, swine, [~~or~~] sheep, or goat species, or
20 its carcass or meat, while in or upon premises [~~which~~]
21 that the person knowingly entered or remained
22 unlawfully in or upon, and [~~which~~] that are fenced or



1 enclosed in a manner designed to exclude intruders[-];
2 or [~~by having~~]

3 (b) Having in the person's possession a live animal,
4 carcass, or meat in any other location."

5 SECTION 41. Section 708-836.5, Hawaii Revised Statutes, is
6 amended to read as follows:

7 "[+]§708-836.5[+] **Unauthorized entry into motor vehicle[-]**
8 **in the first degree.** (1) A person commits the offense of
9 unauthorized entry into motor vehicle in the first degree if the
10 person intentionally or knowingly enters or remains unlawfully
11 in a motor vehicle, without being invited, licensed, or
12 otherwise authorized to enter or remain within the vehicle, with
13 the intent to commit a crime against a person or against
14 property rights.

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

17 SECTION 42. Section 708-840, Hawaii Revised Statutes, is
18 amended by amending subsection (1) to read as follows:

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

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- 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 43. 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
 17 non-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

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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 44. 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 45. 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 constitutes a separate
21 offense."

1 SECTION 46. 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 47. 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,



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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



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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



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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

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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,



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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.



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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 48. 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."

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1 SECTION 49. Section 711-1111, Hawaii Revised Statutes, is
2 amended by amending subsection (1) to read as follows:

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

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

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

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

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



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

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

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

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

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



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

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

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

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

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

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



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



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

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

8 SECTION 51. Section 712-1240.6, Hawaii Revised Statutes,
9 is repealed.

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

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



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

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

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



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

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

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



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

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

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

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

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



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

4 SECTION 53. In codifying the new sections added by section
5 5 of this Act, the revisor of statutes shall substitute
6 appropriate section numbers for the letters used in designating
7 the new sections in this Act.

8 SECTION 54. Statutory material to be repealed is bracketed
9 and stricken. New statutory material is underscored.

10 SECTION 55. This Act shall take effect upon approval.



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Report Title:

Penal Code; Revision

Description:

Makes technical and substantive changes to Penal Code chapters 704, 706, 707, 708, 709, 710, 711, and 712. (SD1)

