

JAN 25 2006

A BILL FOR AN ACT

RELATING TO THE HAWAII PENAL CODE.

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

1 SECTION 1. Chapter 706, Hawaii Revised Statutes, is
2 amended by adding a new section to be appropriately designated
3 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 706-606.5, section 706-622.5, or this section is eligible
9 to be sentenced to probation under subsection (2) if the person
10 meets the following criteria:

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

16 (b) The person has been assessed by a certified substance
17 abuse counselor to be in need of substance abuse due



1 to dependency or abuse under the applicable Diagnostic
2 and Statistical Manual and 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, based upon consideration of
7 the person's history, including whether substance
8 abuse treatment has previously been afforded to the
9 person, and an appraisal of the person's current
10 circumstances and attitude, that the person is
11 genuinely motivated to obtain and maintain substance
12 abuse treatment; and

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

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



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

18 (3) For the purposes of this section, "substance abuse
19 treatment program" means drug or substance abuse treatment
20 services provided outside a correctional facility by a public,
21 private, or nonprofit entity that specializes in treating
22 persons who are diagnosed with having substance abuse or



1 dependency and preferably employs licensed professionals or
2 certified substance abuse counselors.

3 (4) The court, upon written application from a person
4 sentenced under this part, shall issue an order to expunge the
5 record of conviction for that particular offense; provided that
6 a person has successfully completed the substance abuse
7 treatment program and complied with other terms and conditions
8 of probation. A person sentenced to probation under this
9 section shall be eligible for expungement under this subsection
10 only if the person has no other felony conviction on the
11 person's criminal history record.

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

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

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

1 commit a crime against a person or property rights within the
2 building.

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

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

11 (3) In a prosecution for unauthorized entry into a
12 dwelling, it is an affirmative defense that reduces this offense
13 to a misdemeanor that at the time of the unlawful entry:

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

16 (b) The defendant intended to join the social gathering;
17 and

18 (c) The defendant had no intent to commit any unlawful act
19 other than the entry.

20 (4) Unauthorized entry in a dwelling is a class _____ felony.

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

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

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

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

10 "§710- Bribery in the second degree. (1) A person
11 commits the offense of bribery in the second degree if the
12 person:

13 (a) Directly or indirectly gives, offers, or promises any
14 pecuniary benefit to any public servant for or because
15 of any official act performed or to be performed by
16 that public servant or otherwise than as provided by
17 law for the proper discharge of official duty;

18 (b) Being a public servant, directly or indirectly
19 demands, seeks, knowingly receives, knowingly accepts,
20 or knowingly agrees to receive or accept any pecuniary
21 benefit personally for or because of any official act
22 performed or to be performed by the public servant,



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 accused conferred or agreed to the pecuniary benefit as
5 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 the
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 4. Chapter 712, Hawaii Revised Statutes, is
20 amended by adding three new sections to be appropriately
21 designated and to read as follows:



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) Possess one or more preparations, compounds, mixtures,
5 or substances of aggregate weight of one ounce or more
6 containing methamphetamine or any of its salts,
7 isomers, or salts of isomers;

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, or salts of isomers;

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), 706-622.5,
19 706-640, 706-641, 706-659, 706-669 and any other law to the
20 contrary, a person convicted of methamphetamine trafficking in
21 the first degree shall be sentenced to an indeterminate term of
22 imprisonment of twenty years with a mandatory minimum term of

1 imprisonment of not less than two years and not greater than
2 eight years and a 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 not be 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 be 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 term of imprisonment
17 shall be twenty year.

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.



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(2), 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 of term of imprisonment of
9 not less than one year and not greater than four years and a
10 fine 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 term for imprisonment
14 shall not be less than three years, four months and
15 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 not be less that 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 sections 712-A or 712-B,
6 the court may order restitution or reimbursement to the State or
7 county for the cost incurred for any cleanup associated with the
8 manufacture or distribution of methamphetamine and to any other
9 person injured as a result of the manufacture or distribution of
10 methamphetamine."

11 SECTION 5. 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 is required to establish an
19 element of the offense."

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

22 1. By amending subsections (1), (2), (3) and (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



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 is accepted by the professions of medicine or psychology for the
17 examination of those alleged to be [~~suffering from~~] affected by
18 physical or mental disease, disorder, or defect; provided that
19 each examiner shall form and render diagnoses and opinions upon
20 the physical and mental condition of the defendant independently
21 from the other examiners, and the examiners may, upon approval
22 of the court, secure the services of clinical psychologists and



1 other medical or paramedical specialists to assist in the
2 examination and diagnosis.

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

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

1 is a showing to the court of a clear need for
2 communication between or among the examiners for
3 clarification. A description of the communication
4 shall be included in the report. After all reports
5 are submitted to the court, examiners may confer
6 without restriction."

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

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

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

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

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

21 "**§704-406 Effect of finding of unfitness to proceed.** (1)

22 If the court determines that the defendant lacks fitness to



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

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

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



1 (b) Subject to the law governing the involuntary
2 ~~[hospitalization or conditional release of persons~~
3 ~~suffering from]~~ civil commitment of persons affected
4 by physical or mental disease, disorder, or defect,
5 order the defendant to be committed to the custody of
6 the director of health to be placed in an appropriate
7 institution for detention, care, and treatment; or
8 (c) Subject to the law governing involuntary outpatient
9 treatment, order the defendant to be released on
10 conditions the court determines necessary.

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

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

21 (b) Subject to the law governing involuntary civil
22 commitment, ~~[procedures.]~~ order the defendant to be



1 committed to the custody of the director of health to
2 be placed in an appropriate institution for detention,
3 care, and treatment.

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

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

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

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

20 "**§704-407 Special post-commitment or [~~post-conditional~~**
21 **release] post-release hearing.** (1) At any time after
22 commitment as provided in section 704-406, the defendant or the



1 defendant's counsel or the director of health may apply for a
2 special post-commitment or post-release hearing. If the
3 application is made by or on behalf of a defendant not
4 represented by counsel, the defendant shall be afforded a
5 reasonable opportunity to obtain counsel, and if the defendant
6 lacks funds to do so, counsel shall be assigned by the court.
7 The application shall be granted only if the counsel for the
8 defendant satisfies the court by affidavit or otherwise that as
9 an attorney the counsel has reasonable grounds for a good faith
10 belief that the counsel's client has an objection based upon
11 legal grounds to the charge.

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

17 (3) After the hearing, the court shall rule on any legal
18 objection raised by the application and may in an appropriate
19 case quash the indictment or other charge, or find it to be
20 defective or insufficient, or otherwise terminate the
21 proceedings on the law. In any such case, unless all defects in
22 the proceedings are promptly cured, the court shall terminate



1 the commitment or [~~conditional~~] release ordered under section
2 704-406 and order the defendant to be [~~discharged or, subject~~]:

3 (a) Discharged;

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

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

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

16 "**§704-408 Determination of irresponsibility.** If the
17 report of the examiners filed pursuant to section 704-404, or
18 the report of examiners of the defendant's choice under section
19 704-409, states that the defendant at the time of the conduct
20 alleged [~~suffered from~~] was affected by a physical or mental
21 disease, disorder, or defect which substantially impaired the
22 defendant's capacity to appreciate the wrongfulness of the

1 defendant's conduct or to conform the defendant's conduct to the
2 requirements of law, the court shall submit the defense of
3 physical or mental disease, disorder, or defect to the jury or
4 the trier of fact at the trial of the charge against the
5 defendant."

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

8 **"§704-411 Legal effect of acquittal on the ground of**
9 **physical or mental disease, disorder, or defect excluding**
10 **responsibility; commitment; conditional release; discharge;**
11 **procedure for separate post-acquittal hearing.** (1) When a
12 defendant is acquitted on the ground of physical or mental
13 disease, disorder, or defect excluding responsibility, the court
14 shall, on the basis of the report made pursuant to section
15 704-404, if uncontested, or the medical or psychological
16 evidence given at the trial or at a separate hearing, make an
17 order as follows:

18 (a) The court shall order the defendant to be committed to
19 the custody of the director of health to be placed in
20 an appropriate institution for custody, care, and
21 treatment if the court finds that the defendant is
22 affected by a physical or mental disease, disorder, or



1 defect, presents a risk of danger to oneself or others
2 and that the defendant is not a proper subject for
3 conditional release; provided that the director of
4 health shall place defendants charged with
5 misdemeanors or felonies not involving violence or
6 attempted violence in the least restrictive
7 environment appropriate in light of the defendant's
8 treatment needs and the need to prevent harm to the
9 person confined and others; or

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

18 (c) The court shall order the defendant discharged from
19 custody if the court finds that the defendant is no
20 longer affected by physical or mental disease,
21 disorder, or defect, or, if so affected, that the
22 defendant no longer presents a danger to oneself or



1 others and is not in need of care, supervision, or
2 treatment.

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

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

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

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



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

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



1 term "licensed psychologist" includes psychologists exempted
2 from licensure by section 465-3(a)(3).

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

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

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

17 "**§704-412 Committed person; application for conditional**
18 **release or discharge; by the director of health; by the person.**

19 (1) After the expiration of at least ninety days following the
20 order of commitment pursuant to section 704-411, if the director
21 of health is of the opinion that the person committed to [~~his~~]
22 the director's custody is still affected by a physical or mental



1 disease, disorder, or defect and may be released on condition or
2 discharged without danger to [~~himself~~] the person's own self or
3 to the person or property of others, or that the person is no
4 longer affected by a physical or mental disease, disorder, or
5 defect, [~~he~~] the director shall make application for the
6 discharge or conditional release of such person in a report to
7 the court [~~by~~] from which such person was committed and shall
8 transmit a copy of the application and report to the prosecuting
9 attorney of the county from which the [~~defendant~~] person was
10 committed. The defendant shall be given notice of such
11 application.

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



1 the person or property of others. A copy of the application
2 shall be transmitted to the prosecuting attorney of the county
3 from which the defendant was committed. If the determination of
4 the court is adverse to the application, such person shall not
5 be permitted to file a further application until one year has
6 elapsed from the date of any preceding hearing on an application
7 for [~~his~~] the person's discharge or conditional release."

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

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



1 shall report the matter to the probation officer of the
2 conditionally released person. The probation officer may order
3 the conditionally released person to be hospitalized for a
4 period not to exceed seventy-two hours if the probation officer
5 has probable cause to believe the person has violated the
6 requirements of this subsection. No person shall be
7 hospitalized beyond the seventy-two hour period unless a hearing
8 has been held pursuant to subsection (3) ~~[]~~ as provided for by
9 §1-29.

10 (2) Any person released ~~[on condition]~~ pursuant to section
11 704-411 may apply to the court ordering the conditional release
12 for discharge from or modification of the order granting
13 conditional release on the ground that ~~[he]~~ the person is no
14 longer affected by a physical or mental disease, disorder, or
15 defect or may be discharged or the order modified without danger
16 to ~~[himself]~~ the person's own self or to others. The
17 application shall be accompanied by a letter from or supporting
18 affidavit of a qualified physician or licensed psychologist. A
19 copy of the application and letter or affidavit shall be
20 transmitted to the prosecuting attorney of the ~~[county in which~~
21 ~~the person is confined]~~ circuit from which the order issued and
22 to any persons supervising ~~[his]~~ the release and the hearing on



1 the application shall be held following notice to such persons.
2 If the determination of the court is adverse to the application,
3 such person shall not be permitted to file further application
4 until one year has elapsed from the date of any preceding
5 hearing on an application for modification of conditions of
6 release or for discharge.

7 (3) If, at any time after the order pursuant to section
8 704-411 granting conditional release, the court shall determine,
9 after hearing evidence, that the person is still affected by a
10 physical or mental disease, disorder, or defect, and the
11 conditions of release have not been fulfilled or that for the
12 safety of such person or others [~~his~~]the person's conditional
13 release should be revoked, the court may forthwith modify the
14 conditions of release or order the person to be committed to the
15 custody of the director of health, subject to discharge or
16 release only in accordance with the procedure prescribed in
17 section 704-412."

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

20 **"§704-414 Procedure upon application for discharge,**
21 **conditional release, or modification of conditions of release.**

22 Upon filing of an application pursuant to section 704-412 for



1 discharge or conditional release, or upon the filing of an
2 application pursuant to section 704-413 for discharge or for
3 modification of conditions of release, the court shall appoint
4 three qualified examiners in felony cases and one qualified
5 examiner in nonfelony cases to examine and report upon the
6 physical and mental condition of the defendant. In felony cases
7 the court shall appoint at least one psychiatrist and at least
8 one licensed psychologist. The third member may be [~~either~~] a
9 psychiatrist, a licensed psychologist, or a qualified physician.
10 One of the three shall be a psychiatrist or licensed
11 psychologist designated by the director of health from within
12 the department of health. The examiners shall be appointed from
13 a list of certified examiners as determined by the department of
14 health. To facilitate the examination and the proceedings
15 thereon, the court may cause the defendant, if not then
16 confined, to be committed to a hospital or other suitable
17 facility for the purpose of the examination and may direct that
18 qualified physicians or psychologists retained by the defendant
19 be permitted to witness and participate in the examination. The
20 examination and report and the compensation of persons making or
21 assisting in the examination shall be in accord with section
22 704-404(3), (4)(a) and (b), (6), (7), (8), and (9). As used in



1 this section, the term "licensed psychologist" includes
2 psychologists exempted from licensure by section 465-3(a)(3)."

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

5 **"§704-415 Disposition of application for discharge,
6 conditional release, or modification of conditions of release.**

7 If the court is satisfied by the report filed pursuant to
8 section 704-414, and such testimony of the reporting examiners
9 as the court deems necessary, that the person is affected by a
10 physical or mental disease, disorder, or defect and the
11 discharge, conditional release, or modification of conditions of
12 release applied for may be granted without danger to the
13 committed or conditionally released person or to the person or
14 property of others, or that the person is no longer affected by
15 a physical or mental disease, disorder, or defect, the court
16 shall grant the application and order the relief. If the court
17 is not so satisfied, it shall promptly order a hearing[~~to~~
18 ~~determine whether such person may safely be discharged or~~
19 ~~released]. Any such hearing shall be deemed a civil proceeding~~
20 and the burden shall be upon the applicant to prove that the
21 person is no longer affected by a physical or mental disease,
22 disorder, or defect and may safely be released on the conditions



1 applied for or discharged. According to the determination of
2 the court upon the hearing, the person shall thereupon be
3 discharged, or released on such conditions as the court
4 determines to be necessary, or shall be recommitted to the
5 custody of the director of health, subject to discharge or
6 release only in accordance with the procedure prescribed in
7 section 704-412."

8 SECTION 15. Section 704-416.5, Hawaii Revised Statutes, is
9 amended by amending subsection (2) to read as follows:

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

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

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

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



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

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

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

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

16 **"§706-605 Authorized disposition of convicted defendants.**

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



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;

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



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 person
13 convicted of a misdemeanor or petty misdemeanor to a suspended
14 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 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

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 making restitution, the court shall not consider the defendant's
14 financial ability to make restitution in determining the amount
15 of restitution to order. The court, however, shall consider the
16 defendant's financial ability to make restitution for the
17 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."



1 SECTION 18. 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 or any drugs or substances and not including any
16 methamphetamine trafficking offenses under sections 712-A and
17 712-B, is eligible to be sentenced to probation under subsection
18 (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

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 19. 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 20. 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:

- 1 (a) That the defendant not commit another federal or state
2 crime or engage in any criminal conduct in any foreign
3 jurisdiction or under military jurisdiction that would
4 constitute a crime under Hawai`i law during the term
5 of 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 victims if the court has ordered
21 restitution pursuant to section 706-646.



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,~~] two years in class A felony cases,
10 eighteen months in class B felony cases, one year in
11 class C felony cases, [and not exceeding] six months
12 in misdemeanor cases[~~+~~], and five days in petty
13 misdemeanor cases; provided that notwithstanding any
14 other provision of law, any order of imprisonment
15 under this subsection that provides for prison work
16 release shall require the defendant to pay thirty per
17 cent of the defendant's gross pay earned during the
18 prison work release period to satisfy any restitution
19 order. The payment shall be handled by the adult
20 probation division and shall be paid to the victim on
21 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 (c) Support the defendant's dependents and meet other
- 4 family responsibilities;
- 5 (d) Pay a fine imposed pursuant to section 706-605(1) (b);
- 6 ~~[(e) Make restitution as specified in section 706-~~
- 7 ~~605(1)(d);]~~
- 8 ~~[(f)]~~ (e) Work conscientiously at suitable employment or pursue
- 9 conscientiously a course of study or vocational
- 10 training that will equip the defendant for suitable
- 11 employment;
- 12 ~~[(g)]~~ (f) Refrain from engaging in a specified occupation,
- 13 business, or profession bearing a reasonably direct
- 14 relationship to the conduct constituting the crime or
- 15 engage in the specified occupation, business, or
- 16 profession only to a stated degree or under stated
- 17 circumstances;
- 18 ~~[(h)]~~ (g) Refrain from frequenting specified kinds of places or
- 19 from associating unnecessarily with specified persons,
- 20 including but not limited to the victim of the crime,
- 21 any witnesses, regardless of whether they actually
- 22 testified in the prosecution, law enforcement



- 1 officers, co-defendants, or other individuals with
2 whom contact may adversely affect the rehabilitation
3 or reformation of the person convicted;
- 4 [~~(i)~~] (h) Refrain from use of alcohol or any use of narcotic
5 drugs or controlled substances without a prescription;
- 6 [~~(j)~~] (i) Refrain from possessing a firearm, ammunition,
7 destructive device, or other dangerous weapon;
- 8 [~~(k)~~] (j) Undergo available medical [~~, psychiatric, or~~
9 ~~psychological~~] or mental health treatment, including
10 treatment for [~~drug or alcohol~~] substance abuse or
11 dependency, and remain in a specified [~~institution~~]
12 facility if required for that purpose;
- 13 [~~(l)~~] (k) Reside in a specified place or area or refrain from
14 residing in a specified place or area;
- 15 [~~(m)~~] (l) Submit to periodic urinalysis or other similar testing
16 procedure;
- 17 [~~(n)~~ ~~Satisfy other reasonable conditions as the court may~~
18 ~~impose;~~]
- 19 [~~(o)~~] (m) Refrain from entering specified geographical areas
20 without the court's permission; [~~or~~]
- 21 [~~(p)~~] (n) Refrain from leaving the person's dwelling place
22 except to go to and from the person's place of



1 employment, the office of the person's physician or
 2 dentist, the probation office or ~~[as may be granted]~~
 3 any other location as may be approved by the person's
 4 probation officer pursuant to court order. As used in
 5 this paragraph, "dwelling place" includes the person's
 6 yard or, in the case of condominiums, the common
 7 elements~~[.];~~;

8 (o) Comply with a specified curfew;

9 (p) Submit to an electronic monitoring device; or

10 (q) Satisfy other reasonable conditions as the court may
 11 impose.

12 (3) Written statement of conditions. The court shall
 13 order the defendant at the time of sentencing to sign a written
 14 acknowledgement of receipt of the conditions of probation. The
 15 defendant shall be given a written copy of any requirements
 16 imposed pursuant to this section, stated with sufficient
 17 specificity to enable the defendant to ~~[guide the defendant's~~
 18 ~~self]~~ comply with the conditions accordingly."

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

21 "(1) The defendant shall pay a fine or any installment
 22 thereof to the cashier or clerk of the ~~[sentencing]~~ district or



1 circuit court. In the event of default in payment, the clerk
2 shall notify the prosecuting attorney and, if the defendant is
3 on probation, the probation officer."

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

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

17 (3) In ordering restitution, the court shall not consider
18 the defendant's financial ability to make restitution in
19 determining the amount of restitution to order. The court,
20 however, shall consider the defendant's financial ability to
21 make restitution for the purpose of establishing the time and
22 manner of payment. The court shall specify the time and manner



1 in which restitution shall be paid. Restitution shall be a
2 dollar amount that is sufficient to reimburse any victim fully
3 for losses including but not limited to:

4 (a) Full value of stolen or damaged property, as
5 determined by replacement costs of like property, or
6 the actual or estimated cost of repair, if repair is
7 possible;

8 (b) Medical expenses; and

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

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

13 **"§706-661 [~~Sentence of imprisonment for felony; extended~~]**
14 **Extended terms of imprisonment.** [~~In the cases designated in~~
15 ~~section 706-662,~~] The court may sentence a person who [~~has been~~
16 ~~convicted of a felony may be sentenced~~] satisfies the criteria
17 for any of the categories set forth in section 706-662 to an
18 extended [~~indeterminate~~] term of imprisonment[~~.—When ordering~~
19 ~~such a sentence, the court shall impose the maximum length of~~
20 ~~imprisonment which shall be~~], which shall have a maximum length
21 as follows:

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

9 In exercising its discretion on whether to impose the extended
10 term of imprisonment or to use other available sentencing
11 options, the court shall consider whether the extended term is
12 necessary for the protection of the public and whether the
13 extended term is necessary in light of the other factors set
14 forth in section 706-606. When ordering an extended term
15 sentence, the court shall impose the maximum length of
16 imprisonment. The minimum length of imprisonment for an
17 extended term sentence under paragraphs (2), (3), and (4) shall
18 be determined by the Hawaii paroling authority in accordance
19 with section 706-669."

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



1 "**§706-662 Criteria for extended terms of imprisonment.** A
 2 [conviected] defendant who has been convicted of a felony
 3 qualifies for [~~may be subject to~~] an extended term of
 4 imprisonment under section 706-661[7] if the convicted defendant
 5 satisfies one or more of the following criteria:

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

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

- 17 (a) The circumstances of the crime show that the
- 18 defendant has knowingly engaged in criminal
- 19 activity as a major source of livelihood; or
- 20 (b) The defendant has substantial income or resources
- 21 not explained to be derived from a source other
- 22 than criminal activity.

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

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

18 (a) The defendant is being sentenced for two or more
19 felonies or is already under sentence of
20 imprisonment for felony; or

21 (b) The maximum terms of imprisonment authorized for
22 each of the defendant's crimes, if made to run



1 consecutively, would equal or exceed in length
2 the maximum of the extended term imposed or would
3 equal or exceed forty years if the extended term
4 imposed is for a class A felony.

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

10 (a) The defendant attempts or commits any of the
11 following crimes: murder, manslaughter, a sexual
12 offense that constitutes a felony under chapter
13 707, robbery, felonious assault, burglary, or
14 kidnapping; and

15 (b) The defendant, in the course of committing or
16 attempting to commit the crime, inflicts serious
17 or substantial bodily injury upon a person who
18 is:

- 19 (i) Sixty years of age or older;
- 20 (ii) Blind, a paraplegic, or a quadriplegic; or
- 21 (iii) Eight years of age or younger; and

1 (c) Such disability is known or reasonably should be
2 known to the defendant.

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

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

9 (b) The defendant intentionally selected a victim, or
10 in the case of a property crime, the property
11 that was the object of a crime, because of
12 hostility toward the actual or perceived race,
13 religion, disability, ethnicity, national origin,
14 gender identity or expression, or sexual
15 orientation of any person. For purposes of this
16 subsection, "gender identity or expression"
17 includes a person's actual or perceived gender,
18 as well as a person's gender identity,
19 gender-related self-image, gender-related
20 appearance, or gender-related expression;
21 regardless of whether that gender identity,
22 gender-related self-image, gender--related



1 appearance, or gender-related expression is
2 different from that traditionally associated with
3 the person's sex at birth."

4 SECTION 25. Section 706-667, Hawaii Revised Statutes, is
5 amended by amending subsections (1) and (2) to read as follows:

6 "(1) Defined. A young adult defendant is a person
7 convicted of a crime who, at the time of [~~sentencing~~] the
8 offense, is less than twenty-two years of age and who has not
9 been previously convicted of a felony as an adult or adjudicated
10 as a juvenile for an offense that would have constituted a
11 felony had the young adult defendant been an adult.

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

19 SECTION 26. Section 707-700, Hawaii Revised Statutes, is
20 amended by amending the definitions of "mentally incapacitated"
21 and "sexual penetration" to read as follows:



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

5 "Sexual penetration" means:

- 6 (1) Vaginal intercourse, anal intercourse, fellatio,
7 deviate sexual intercourse, or any intrusion of any
8 part of a person's body or of any object into the
9 genital or anal opening of another person's body; it
10 occurs upon any penetration, however slight, but
11 emission is not required; [~~or~~] as used in this
12 section, "genital opening" includes the anterior
13 surface of the vulva or labia majora; or
14 (2) Cunnilingus or anilingus, whether or not actual
15 penetration has occurred.

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

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

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

- 1 (a) More than one person in the same or separate incident;
- 2 (b) A law enforcement officer, judge, or prosecutor
- 3 arising out of the performance of official duties;
- 4 (c) A person known by the defendant to be a witness in a
- 5 criminal prosecution[+] and the killing is related to
- 6 the person's status as a witness;
- 7 (d) A person by a hired killer, in which event both the
- 8 person hired and the person responsible for hiring the
- 9 killer shall be punished under this section; or
- 10 (e) A person while the defendant was imprisoned."

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

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

- 14 (a) [~~He~~] The person recklessly causes the death of another
- 15 person; or
- 16 (b) [~~He~~] The person intentionally causes another person to
- 17 commit suicide."

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

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



- 1 (a) The person intentionally or knowingly causes
2 substantial bodily injury to another;
- 3 (b) The person recklessly causes serious or substantial
4 bodily injury to another person;
- 5 (c) The person intentionally or knowingly causes bodily
6 injury to a correctional worker, as defined in section
7 710-1031(2), who is engaged in the performance of duty
8 or who is within a correctional facility;
- 9 (d) The person intentionally or knowingly causes bodily
10 injury to another person with a dangerous instrument;
11 or
- 12 (e) The person intentionally or knowingly causes bodily
13 injury to an educational worker who is engaged in the
14 performance of duty or who is within an educational
15 facility. For the purposes of this section,
16 "educational worker" means any administrator,
17 specialist, counselor, teacher, or employee of the
18 department of education, or a person who is a
19 volunteer in a school program, activity, or function
20 that is established, sanctioned, or approved by the
21 department of education or a person hired by the



1 department of education on a contractual basis and
2 engaged in carrying out an educational function."

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

5 "**§707-714 Reckless endangering in the second degree.** (1)

6 A person commits the offense of reckless endangering in the
7 second degree if the person~~[-engages]~~:

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

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

- 15 (b) Intentionally discharges a firearm in a populated
16 area, in a residential area or within the boundaries
17 or in the direction of any road, street or highway;
18 provided that the provisions of this paragraph shall
19 not apply to any person who discharges a firearm upon
20 a target range for the purpose of the target shooting
21 done in compliance with all laws and regulations
22 applicable thereto.



1 ~~[(3)]~~ (2) Reckless endangering in the second degree is a
2 misdemeanor."

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

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

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

10 (b) By threats made in a common scheme against different
11 persons; or

12 (c) Against a public servant~~[, including]~~ arising out of
13 the performance of the public servant's duties. For
14 the purposes of this section, "public servant"
15 includes but is not limited to an educational worker~~[~~
16 ~~who for the purposes of this section shall mean].~~

17 "Educational worker" means an administrator,
18 specialist, counselor, teacher, or other employee of
19 the department of education, or a volunteer as defined
20 by section 90-1, in a school program, activity, or
21 function that is established, sanctioned, or approved
22 by the department of education, or a person hired by

1 the department of education on a contractual basis and
2 engaged in carrying out an educational function; or
3 (d) With the use of a dangerous instrument."

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

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

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

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

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

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

18 (ii) The person is not legally married to the minor.

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

- 1 (d) The person knowingly subjects a mentally defective
- 2 person to sexual penetration; or
- 3 (e) The person knowingly engages in sexual penetration
- 4 with another person who is mentally incapacitate or
- 5 physically helpless as a result of the influence of a
- 6 substance that the actor knowingly caused to be
- 7 administered to the other person without the other
- 8 person's consent."

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

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

- 13 (a) The person knowingly subjects another person to an act
- 14 of sexual penetration by compulsion;
- 15 (b) The person knowingly subjects to sexual penetration
- 16 another person who is [~~mentally defective,~~] mentally
- 17 incapacitated[~~7~~] or physically helpless; or
- 18 (c) The person, while employed:
 - 19 (i) In a state correctional facility;
 - 20 (ii) By a private company providing services at a
 - 21 correctional facility;

1 (iii) By a private company providing community-based
2 residential services to persons committed to the
3 director of public safety and having received
4 notice of this statute;

5 (iv) By a private correctional facility operating in
6 the State of Hawaii; or

7 (v) As a law enforcement officer as defined in
8 section 710-1000(13),
9 knowingly subjects to sexual penetration an imprisoned
10 person, a person confined to a detention facility, a
11 person committed to the director of public safety, a
12 person residing in a private correctional facility
13 operating in the State of Hawaii, or a person in
14 custody; provided that paragraph (b) and this
15 paragraph shall not be construed to prohibit
16 practitioners licensed under chapter 453, 455, or 460,
17 from performing any act within their respective
18 practices; and further provided that this paragraph
19 shall not be construed to prohibit a law enforcement
20 officer from performing a lawful search pursuant to a
21 warrant or exception to the warrant clause."



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

3 **"§708-801 Valuation of property or services.** Whenever the
4 value of property or services is determinative of the class or
5 grade of an offense, or otherwise relevant to a prosecution, the
6 following shall apply:

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

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

16 (a) The value of an instrument constituting an
17 evidence of debt, such as a check, traveler's
18 check, draft, or promissory note, shall be deemed
19 the amount due or collectible thereon or thereby,
20 that figure ordinarily being the face amount of
21 the indebtedness less any portion thereof which
22 has been satisfied;

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

8 (3) When property or services has value but that value
9 cannot be ascertained pursuant to the standards set
10 forth above, the value shall be deemed to be an amount
11 not exceeding \$100."

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

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

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

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



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

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

7 SECTION 37. Section 708-830, Hawaii Revised Statutes, is
8 amended by amending subsection (1) to read as follows:

9 "A person commits theft if the person does any of the
10 following:

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

12 A person obtains[7] or exerts unauthorized control
13 over[7] the property of another with intent to deprive
14 the other of the property."

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

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

19 (a) Of property or services the value of which exceeds
20 \$100; or



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

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

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

14 SECTION 40. Section 708-836.5, Hawaii Revised Statutes, is
15 amended by amending subsection (1) to read as follows:

16 "(1) A person commits the offense of unauthorized entry
17 into motor vehicle in the first degree if the person
18 intentionally or knowingly enters or remains unlawfully in a
19 motor vehicle without being invited, licensed, or otherwise
20 authorized to enter or remain in the vehicle with the intent to
21 commit a crime against a person or against property rights."

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

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

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

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

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

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

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

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



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

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

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

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

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

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

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

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

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

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

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

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

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



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

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

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

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

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

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



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

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

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



1 officer and attached to a written report which shall
2 be submitted in all cases. A third copy of the
3 warning citation shall be given to the abused person;

4 (e) If the person so ordered refuses to comply with the
5 order to leave the premises or returns to the premises
6 before the expiration of the period of separation, or
7 if the person so ordered initiates any contact with
8 the abused person, the person shall be placed under
9 arrest for the purpose of preventing further physical
10 abuse or harm to the family or household member; and

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

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

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

21 (b) For a second offense that occurs within one year of
22 the first conviction, the person shall be termed a



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

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

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

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

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



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

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

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

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

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

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

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

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

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

20 1. By amending subsection (1) to read:

21 "(1) A person commits the offense of bribery in the first
22 degree if:

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

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

13 2. By amending subsection (4) to read as follows:

14 "(4) Bribery in the first degree is a class [C] B felony.
15 A person convicted of violation this section, notwithstanding
16 any 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 48. Section 711-1111, Hawaii Revised Statutes, is
20 amended by amending subsection (1) to read as follows:

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

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

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

15 **(c) Trespasses on property for the sexual gratification of**
16 **the actor;**

17 ~~(b)~~ **(d)** Installs or uses, or both, in any private place,
18 without consent of the person or persons entitled to
19 privacy therein, any device for observing, recording,
20 amplifying, or broadcasting sounds or events in that
21 place other than another person in a stage of undress
22 or sexual activity;



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

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

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

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

20 (ii) Interception by the telephone company, electronic
21 mail account provider, or telephone or electronic
22 mail subscriber incident to enforcement of



1 regulations limiting use of the facilities or
 2 incident to other operation and use;
 3 [~~(f)~~] (h) Divulges without the consent of the sender or the
 4 receiver the existence or contents of any message or
 5 photographic image by telephone, telegraph, letter,
 6 electronic transmission, or other means of
 7 communicating privately, if the accused knows that the
 8 message or photographic image was unlawfully
 9 intercepted or if the accused learned of the message
 10 or photographic image in the course of employment with
 11 an agency engaged in transmitting it; or
 12 [~~(g)~~] (i) Knowingly possesses materials created under
 13 circumstances prohibited in section 711-1110.9"

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

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

- 18 (a) Possesses one or more preparations, compounds,
 19 mixtures, or substances of an aggregate weight of:
 20 (i) One ounce or more, containing methamphetamine,
 21 heroin, morphine, or cocaine or any of their

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



1 provided that this subsection shall not apply to any
2 person registered under section 329-32."

3 SECTION 50. Section 712-1240.6, Hawaii Revised Statutes,
4 is repealed.

5 ~~["§712-1240.6] Unlawful methamphetamine trafficking;~~

6 ~~penalties. (1) A person commits the offense of unlawful~~
7 ~~methamphetamine trafficking if the person knowingly~~
8 ~~manufactures, distributes, dispenses, or possesses with intent~~
9 ~~to manufacture, distribute or dispense, one or more~~
10 ~~preparations, compounds, mixtures, or substances of~~
11 ~~methamphetamine, or any of its salts, isomers, and salts of~~
12 ~~isomers.~~

13 ~~(2) The manufacture, distribution, or dispensing of or~~
14 ~~possession with intent to manufacture, distribute, or dispense~~
15 ~~one or more preparations, compounds, mixtures, or substances of~~
16 ~~an aggregate weight of one-eighth ounce or more of~~
17 ~~methamphetamine, or any of its salts, isomers, and salts of~~
18 ~~isomers is a class A felony with a mandatory minimum prison term~~
19 ~~of five years; provided however:~~

20 ~~(a) If death or serious bodily injury as defined in~~
21 ~~section 707-700 to any person other than the~~
22 ~~defendant, results from the manufacture, distribution,~~

~~1 or dispensing of or possession with intent to
2 manufacture, distribute, or dispense any
3 methamphetamine substance, conviction under this
4 section shall be treated as a class A felony, with a
5 mandatory minimum prison term of ten years and a fine
6 not to exceed \$4,000,000 if the defendant is an
7 individual, or a fine not to exceed \$10,000,000 if the
8 defendant is other than an individual; and~~

~~9 (b) If the defendant has been convicted of any felony drug
10 offense prior to conviction of the offense under this
11 section, conviction under this section shall be
12 punishable by a term of life imprisonment with the
13 possibility of parole, with a mandatory minimum prison
14 term of fifteen years and a fine not to exceed
15 \$8,000,000 if the defendant is an individual, or a
16 fine not to exceed \$20,000,000 if the defendant is
17 other than an individual.~~

~~18 (3) The manufacture, distribution, or dispensing of one or
19 more preparations, compounds, mixtures, or substances of an
20 aggregate weight of less than one-eighth ounce of
21 methamphetamine, or any of its salts, isomers, and salts of~~

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

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

13 (b) ~~If the defendant has been convicted of any felony drug~~
14 ~~offense prior to conviction of the offense under this~~
15 ~~section, conviction under this section shall be~~
16 ~~treated as a class A felony, with a mandatory minimum~~
17 ~~prison term of eight years and a fine not to exceed~~
18 ~~\$4,000,000 if the defendant is an individual, or a~~
19 ~~fine not to exceed \$10,000,000 if the defendant is~~
20 ~~other than an individual.~~

21 (c) ~~If the distribution or dispensing of any amount of a~~
22 ~~methamphetamine substance is to a minor, then~~

1 ~~conviction under this section shall be treated as a~~
 2 ~~class A felony, with a mandatory minimum prison term~~
 3 ~~of five years.~~

4 ~~(4) A defendant convicted of the offense of unlawful~~
 5 ~~methamphetamine trafficking shall be sentenced in accordance~~
 6 ~~with this section, notwithstanding sections 706-620(2), 706-659,~~
 7 ~~706-640, and 706-641. When sentencing a defendant convicted of~~
 8 ~~the offense of unlawful methamphetamine trafficking, the court~~
 9 ~~may order restitution or reimbursement to:~~

10 ~~(a) The state or county government for the cost incurred~~
 11 ~~for any cleanup associated with the manufacture,~~
 12 ~~distribution, or dispensing of methamphetamine, or any~~
 13 ~~of its salts, isomers, and salts of isomers by the~~
 14 ~~defendant; and~~

15 ~~(b) Any other person injured as a result of the~~
 16 ~~manufacture, distribution, or dispensing of~~
 17 ~~methamphetamine, or any of its salts, isomers, and~~
 18 ~~salts of isomers, by the defendant.]"~~

19 SECTION 51. This Act does not affect rights and duties
 20 that matured, penalties that were incurred, and proceedings that
 21 were begun, before its effective date.

1 SECTION 52. In codifying the new sections added by section
 2 4 of this Act, the revisor of statutes shall substitute
 3 appropriate section numbers for the letters used in designating
 4 the new sections in this Act.

5 SECTION 53. Statutory material to be repealed is bracketed
 6 and stricken. New statutory material is underscored.

7 SECTION 54. This Act shall take effect on July 1, 2006.

8
 INTRODUCED BY: _____

Clarence K. Iversen
Carol Furumasa
Russell Kohrt



Report Title:

Penal Code

SB 2937

Description:

Creates new offenses regarding methamphetamines, burglary, and bribery. Amends penal code as to physical or mental disease, disposition of convicted defendants, sentencing for first-time drug and property offenders, terms of probation and imprisonment, young adult defendants, offenses against the person and against property rights, offenses against the family and incompetents, bribery, and violations of privacy.

