

A Bill for an Act Relating to the Illegal Use of Controlled Substances.

Be It Enacted by the Legislature of the State of Hawaii:

SECTION 1. The legislature finds that comprehensive legislation is needed to ensure the safety of Hawaii residents due to the use of and addiction to crystal methamphetamine (especially in the form known as “ice”), which has reached epidemic proportions and is currently considered a public health crisis.

In the summer of 2003, the speaker of the house of representatives and president of the senate appointed eighteen legislators to the Joint House-Senate Task Force on Ice and Drug Abatement (Task Force). The mission of the Task Force was to find a solution to the ice epidemic and draft comprehensive legislation to address the problems created by the ice epidemic. After nearly eighty hours of informational briefings, public hearings, and site visits, and the input of over four hundred persons, the Task Force concluded that the solution to the ice epidemic is to treat the present generation of ice abusers and prevent future generations from becoming substance abusers. At the request of the leaders of both houses, a report on the findings and recommendations of the Task Force was submitted in January 2004. This measure incorporates legislation recommended in the “Final Report of the Task Force” (See “Final Report of the Task Force,” pp. 12-13).

Accordingly, the legislature adopts the findings and recommendations in the “Final Report of the Task Force” relating to the ice epidemic that:

- (1) The ice epidemic is a serious public health crisis that must be immediately abated to protect Hawaii’s future generations and its resources. It appears that the ice epidemic began in 1997 (Wolkoff, “Methamphetamine Abuse: An Overview for Health Care Professionals,” Hawaii Medical Journal, Vol. 56, February 1997). The use and abuse of this powerful drug has permeated all facets of our community, workplaces, prisons, and law enforcement activities. The data overwhelmingly suggest an ice epidemic that is growing, that, if left unchecked, will consume government resources and further destroy lives and families;
- (2) Hawaii has been experiencing a second wave of the disease in the last few years, as the longer term effects of the early onset of the disease now manifest themselves in the addicted population (Task Force testimony of William Wood). For example, based on information reported to the Task Force, most recovering addicts report long-term use of ice in the range of five to ten years or longer. Trends in adult arrests for drug possession in Hawaii for the past ten years reflect this second wave. Arrests for possession of ice (reported as a “nonnarcotic” drug) peaked in 1997, then declined for two years. Starting in 2000, arrests for ice possession began to dramatically increase. In 2002, ice possession arrests had nearly tripled since 1999 and more than doubled the peak in 1997 (Office of the Attorney General of the State of Hawaii, Crime in Hawaii 2002, p. 110). Similarly, although less dramatic, the

drug offenses in the manufacture and sale of ice over the past ten years reflect the same peak in 1997 followed by a one year decline, then a steady increase since 1999 to their highest levels in 2002 (Id.);

- (3) Ice addiction is now the number one substance for which publicly funded treatment is sought, surpassing admissions for alcohol addiction. Between 1998 and 2002, admissions into treatment for ice increased by approximately eighty per cent (Task Force testimony by Elaine Wilson, DOH/ADAD). Nearly every adult in recovery who spoke to the Task Force reported ice as the primary drug of choice. Similarly, every agency testifying before the Task Force that provided adult drug treatment services reported ice as the primary drug of choice in its treatment population;
- (4) Deaths associated with ice have dramatically risen over the years. Oahu deaths associated with ice usage rose from eleven in 1991, to twenty-seven in 1998, and to sixty-two in 2002 (Task Force testimony of William Wood). Similarly, on the neighbor islands, deaths associated with methamphetamine usage rose from one in 1998 to twenty in 2002 (Task Force testimony of Clifford Wong); and
- (5) Hawaii's ice usage by those persons arrested is among the highest in the nation. Among adult men arrested who tested positive for drug use, 37.4 per cent tested positive for ice in 2001. The ice usage rate for arrested males is the highest in the nation. Among adult women arrested who tested positive for drug use, 36.1 per cent tested positive for ice in 2001. Hawaii's ice usage among female arrestees is among the highest across the nation ("ADAM, NDCS Report" February 2003).

The legislature further finds that Hawaii has a compelling state interest in enacting the following laws to control the use of ice and other illegal drugs:

- (1) Deter the proliferation of drug trafficking and importation into Hawaii;
- (2) Protect children from the dangers of clandestine methamphetamine laboratories and homes where illegal substances may harm them;
- (3) Expand access to treatment for first time nonviolent drug offenders;
- (4) Allow families to involuntarily commit a family member to substance abuse outpatient treatment;
- (5) Create parity for treatment for substance abuse addiction; and
- (6) Encourage the development of clean and sober homes for persons recovering from substance abuse.

PART I. CRIMINAL SANCTIONS

SECTION 2. The legislature finds that new and enhanced criminal penalties are needed to protect its citizens from the effects of the ice epidemic. These new laws are necessary:

- (1) To support law enforcement's efforts at drug interdiction;
- (2) To discourage the proliferation of drug traffickers; and
- (3) For public safety.

Children who are exposed to both the dangers of ice and household members abusing ice must be protected. Child Welfare Services estimates that eighty-five to ninety per cent of its cases involved parents addicted to ice or other drugs. Children of parents who abuse drugs are three times more likely to be abused and four times more likely to be neglected (Reid, et al. "No Safe Haven: Children of Substance Abusing Parents," The National Center on Addiction and Substance Abuse at Columbia University, January 1999. See, "Final Report of the Task Force," pp. 29-32, for more details on the effects on children due to ice usage in the home.)

Law enforcement reports that children have been found in drug houses and methamphetamine labs. Police have discovered methamphetamine labs in many areas of Hawaii, including vehicles and homes located near schools. A recent study by the Office for Victims of Crime describes a frightening problem of children exposed to injury and health risks due to exposure to toxic chemicals caused by equipment and the process used to manufacture ice. Further, children who are present in clandestine labs or drug houses are often unsupervised, subject to hazardous lifestyles such as weapons on the premises, household food and other items contaminated by poisonous substances, and unhygienic conditions (Swetlow, Karen, "Children at Clandestine Methamphetamine Labs: Helping Meth's Youngest Victims," U.S. Department of Justice, Office of Justice Programs, Office for Victims of Crimes, June 2003).

Nearly half of the adolescents in school report experimentation with illegal drugs by the twelfth grade, forty per cent by the tenth grade, and over twenty per cent by the eighth grade (See, "Final Report of the Task Force", pp. 39-40). Over five thousand adolescents in school need treatment for illegal drug use (See, "Final Report of the Task Force", p. 34). This means that distribution of illegal drugs to students in school remains a fertile ground for drug traffickers, using minors as conduits for drug distribution. This practice must be stopped.

The sale of ice is a lucrative illegal business in Hawaii. The price for one-fourth gram of ice ranges from \$50 to \$250 and one pound of ice goes for \$20,000 to \$45,000 (2004 Report of the federal High Intensity Drug Trafficking Area program (HIDTA)). The daily cost of ice addiction is estimated to range between \$50 to \$170 per person (Task Force Testimony of Keith Kamita, Edward Kubo). While no precise numbers are available, daily ice usage is estimated at a street value of between \$1.5 to over \$5 million (Task Force Testimony of Peter Carlisle, Edward Kubo). This large consumption of ice reinforces the need for treatment for the addicted population to reduce the demand for this toxic drug.

The purpose of this part is to:

- (1) Add new laws that establish penalties for the manufacture or distribution of crystal methamphetamine similar to federal law, 21 United States Code Section 841, and permit the court to impose fines for clean up of methamphetamine materials and pay restitution to persons injured by the manufacture of methamphetamine;
- (2) Create enhanced penalties for persons who place children in danger while illegally manufacturing any controlled substance;
- (3) Create a new offense of promoting controlled substances through the use of a minor with a higher class of offense for drug trafficking in or near schools and parks; and
- (4) Amend drug paraphernalia laws to be more consistent with the federal laws to more easily convict a person for the sale of drug paraphernalia.

SECTION 3. Chapter 712, part IV, Hawaii Revised Statutes, is amended by adding three new sections to be appropriately designated and to read as follows:

"§712-A Manufacturing a controlled substance with a child present. (1) Except as provided in subsection (2), any person convicted of manufacturing a controlled substance in violation of this chapter, who commits the offense knowing that a child under the age of sixteen is present in the structure where the offense occurs, shall be sentenced to a term of two years imprisonment to run consecutively to the maximum indeterminate term of imprisonment for the conviction of any offense involving the manufacturing of a controlled substance.

(2) Any person convicted of manufacturing a controlled substance in violation of this chapter, who commits the offense knowing that a child under the age of

eighteen is present in the structure where the offense occurs and causes the child to suffer serious or substantial bodily injury as defined in section 707-700, shall be sentenced to a term of five years imprisonment to run consecutively to the maximum indeterminate term of imprisonment for the conviction of any offense involving the manufacturing of a controlled substance.

(3) As used in this section, "structure" means any house, apartment building, shop, warehouse, building, vessel, cargo container, motor vehicle, tent, recreational vehicle, trailer, or other enclosed space capable of holding a child and equipment for the manufacture of a controlled substance.

§712-B Unlawful methamphetamine trafficking; penalties. (1) A person commits the offense of unlawful methamphetamine trafficking if the person knowingly manufactures, distributes, dispenses, or possesses with intent to manufacture, distribute or dispense, one or more preparations, compounds, mixtures, or substances of methamphetamine, or any of its salts, isomers, and salts of isomers.

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

- (a) If death or serious bodily injury as defined in section 707-700 to any person other than the defendant, results from the manufacture, distribution, or dispensing of or possession with intent to manufacture, distribute, or dispense any methamphetamine substance, conviction under this section shall be treated as a class A felony, with a mandatory minimum prison term of ten years and a fine not to exceed \$4,000,000 if the defendant is an individual, or a fine not to exceed \$10,000,000 if the defendant is other than an individual; and
- (b) If the defendant has been convicted of any felony drug offense prior to conviction of the offense under this section, conviction under this section shall be punishable by a term of life imprisonment with the possibility of parole, with a mandatory minimum prison term of fifteen years and a fine not to exceed \$8,000,000 if the defendant is an individual, or a fine not to exceed \$20,000,000 if the defendant is other than an individual.

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

- (a) If death or serious bodily injury as defined in section 707-700 to any person other than the defendant results from the manufacture, distribution or dispensing of any methamphetamine substance, conviction under this section shall be treated as a class B felony, with a mandatory minimum prison term of five years and a fine not to exceed \$2,000,000 if the defendant is an individual, or a fine not to exceed \$5,000,000 if the defendant is other than an individual; and
- (b) If the defendant has been convicted of any felony drug offense prior to conviction of the offense under this section, conviction under this section shall be treated as a class A felony, with a mandatory minimum prison term of eight years and a fine not to exceed \$4,000,000 if the defendant is an individual, or a fine not to exceed \$10,000,000 if the defendant is other than an individual.

- (c) If the distribution or dispensing of any amount of a methamphetamine substance is to a minor, then conviction under this section shall be treated as a class A felony, with a mandatory minimum prison term of five years.
- (4) A defendant convicted of the offense of unlawful methamphetamine trafficking shall be sentenced in accordance with this section, notwithstanding sections 706-620(2), 706-659, 706-640, and 706-641. When sentencing a defendant convicted of the offense of unlawful methamphetamine trafficking, the court may order restitution or reimbursement to:
 - (a) The state or county government for the cost incurred for any cleanup associated with the manufacture, distribution, or dispensing of methamphetamine, or any of its salts, isomers, and salts of isomers by the defendant; and
 - (b) Any other person injured as a result of the manufacture, distribution, or dispensing of methamphetamine, or any of its salts, isomers, and salts of isomers, by the defendant.

§712-C Promoting a controlled substance through a minor. (1) A person age eighteen or over commits the offense of promoting a controlled substance through a minor if the person knowingly employs, hires, uses, persuades, induces, entices, or coerces a minor to facilitate the illegal distribution of a controlled substance.

(2) The offense of promoting a controlled substance through a minor is a class B felony unless the offense occurs in, on, or near the real property comprising a school, school vehicles, or public parks as prohibited under section 712-1249.6, in which case it is a class A felony.”

SECTION 4. Section 329-1, Hawaii Revised Statutes, is amended by amending the definitions of “deliver” or “delivery” and “drug paraphernalia” to read as follows:

““Deliver” or “delivery” means the actual, constructive, or attempted transfer or sale from one person to another of a controlled substance[;] or drug paraphernalia, whether or not there is an agency relationship.

“Drug paraphernalia” means all equipment, products, and materials of any kind which are used, primarily intended for use, or primarily designed for use, in planting, propagating, cultivating, growing, harvesting, manufacturing, compounding, converting, producing, processing, preparing, testing, analyzing, packaging, repackaging, storing, containing, concealing, injecting, ingesting, inhaling, or otherwise introducing into the human body a controlled substance in violation of this chapter. It includes[;] but is not limited to:

- (1) Kits used, primarily intended for use, or primarily designed for use in planting, propagating, cultivating, growing, or harvesting of any species of plant which is a controlled substance or from which a prohibited controlled substance can be derived;
- (2) Kits used, primarily intended for use, or primarily designed for use in manufacturing, compounding, converting, producing, processing, or preparing prohibited controlled substances;
- (3) Isomerization devices used, primarily intended for use, or primarily designed for use in increasing the potency of any species of plant which is a prohibited controlled substance;
- (4) Testing equipment used, primarily intended for use, or primarily designed for use in identifying, or in analyzing the strength, effectiveness, or purity of prohibited controlled substances;

- (5) Scales and balances used, primarily intended for use, or primarily designed for use in weighing or measuring prohibited controlled substances;
- (6) Diluents and adulterants; such as quinine hydrochloride, mannitol, mannite, dextrose, and lactose, used, primarily intended for use, or primarily designed for use in cutting prohibited controlled substances;
- (7) Separation gins and sifters used, primarily intended for use, or primarily designed for use in removing twigs and seeds from, or in otherwise cleaning or refining, prohibited marijuana;
- (8) Blenders, bowls, containers, spoons, and mixing devices used, primarily intended for use, or primarily designed for use in compounding prohibited controlled substances;
- (9) Capsules, balloons, envelopes, and other containers used, primarily intended for use, or primarily designed for use in packaging small quantities of prohibited controlled substances;
- (10) Containers and other objects used, primarily intended for use, or primarily designed for use in storing or concealing prohibited controlled substances;
- (11) Hypodermic syringes, needles, and other objects used, primarily intended for use, or primarily designed for use in parenterally injecting prohibited controlled substances into the human body;
- (12) Objects used, primarily intended for use, or primarily designed for use in ingesting, inhaling, or otherwise introducing prohibited marijuana, cocaine, hashish, [ø] hashish oil, or methamphetamine into the human body, such as:
 - (A) Metal, wooden, acrylic, glass, stone, plastic, or ceramic pipes with or without screens, permanent screens, hashish heads, or punctured metal bowls;
 - (B) Water pipes;
 - (C) Carburetion tubes and devices;
 - (D) Smoking and carburetion masks;
 - (E) Roach clips: meaning objects used to hold burning materials, such as marijuana cigarettes, that have become too small or too short to be held in the hand;
 - (F) Miniature cocaine spoons, and cocaine vials;
 - (G) Chamber pipes;
 - (H) Carburetor pipes;
 - (I) Electric pipes;
 - (J) Air-driven pipes;
 - (K) Chillums;
 - (L) Bongs; and
 - (M) Ice pipes or chillers.

In determining whether an object is drug paraphernalia, a court or other authority should consider, in addition to all other logically relevant factors, the following:

- (1) Statements by an owner or by anyone in control of the object concerning its use;
- (2) Prior convictions, if any, of an owner, or of anyone in control of the object, under any state or federal law relating to any controlled substance;
- (3) The proximity of the object, in time and space, to a direct violation of this chapter;
- (4) The proximity of the object to controlled substances;
- (5) The existence of any residue of controlled substances on the object;

- (6) Direct or circumstantial evidence of the intent of an owner, or of anyone in control of the object, to deliver it to a person or persons whom the owner or person in control knows, or should reasonably know, intend to use the object to facilitate a violation of this chapter; the innocence of an owner, or of anyone in control of the object, as to a direct violation of this chapter shall not prevent a finding that the object is intended for use, or designed for use as drug paraphernalia;
- (7) Instructions, oral or written, provided with the object concerning its use;
- (8) Descriptive materials accompanying the object which explain or depict its use;
- (9) National and local advertising concerning its use;
- (10) The manner in which the object is displayed for sale;
- (11) Whether the owner, or anyone in control of the object, is a legitimate supplier of like or related items to the community, such as a licensed distributor or dealer of tobacco products;
- (12) Direct or circumstantial evidence of the ratio of sales of the object or objects to the total sales of the business enterprise;
- (13) The existence and scope of legitimate uses for the object in the community; and
- (14) Expert testimony concerning its use.”

SECTION 5. Section 712-1241, Hawaii Revised Statutes, is amended to read as follows:

“§712-1241 Promoting a dangerous drug in the first degree. (1) A person commits the offense of promoting a dangerous drug in the first degree if the person knowingly:

- (a) Possesses one or more preparations, compounds, mixtures, or substances of an aggregate weight of:
 - (i) One ounce or more, containing methamphetamine, heroin, morphine, or cocaine or any of their respective salts, isomers, and salts of isomers; or
 - (ii) One and one-half ounce or more, containing one or more of any of the other dangerous drugs; or
- (b) Distributes[;], except for methamphetamine as provided in section 712-B:
 - (i) Twenty-five or more capsules, tablets, ampules, dosage units, or syrettes containing one or more dangerous drugs; or
 - (ii) One or more preparations, compounds, mixtures, or substances of an aggregate weight of:
 - (A) One-eighth ounce or more, containing [methamphetamine,] heroin, morphine, or cocaine or any of their respective salts, isomers, and salts of isomers; or
 - (B) Three-eighths ounce or more, containing any other dangerous drug;
- (c) Distributes any dangerous drug in any amount to a minor[;] except for methamphetamine as provided in section 712-B; or
- (d) Manufactures a dangerous drug in any amount[;], except for methamphetamine as provided in section 712-B; provided that this subsection shall not apply to any person registered under section 329-32.

(2) Promoting a dangerous drug in the first degree is a class A felony.

~~[(3) Notwithstanding any law to the contrary, except for first-time offenders sentenced under section 706-622.5, if the commission of the offense of promoting a~~

~~dangerous drug in the first degree under this section involved the possession, distribution, or manufacture of methamphetamine, or any of its salts, isomers, and salts of isomers, the person convicted shall be sentenced to an indeterminate term of imprisonment of twenty years with a mandatory minimum term of imprisonment, the length of which shall be not less than one year and not greater than ten years, at the discretion of the sentencing court for a conviction under subsection (1)(a), (1)(b), or (1)(c) and not less than ten years for a conviction under subsection (1)(d). The person convicted shall not be eligible for parole during the mandatory term of imprisonment.]”~~

SECTION 6. Section 712-1242, Hawaii Revised Statutes, is amended to read as follows:

“§712-1242 Promoting a dangerous drug in the second degree. (1) A person commits the offense of promoting a dangerous drug in the second degree if the person knowingly:

- (a) Possesses twenty-five or more capsules, tablets, ampules, dosage units, or syrettes, containing one or more dangerous drugs; or
- (b) Possesses one or more preparations, compounds, mixtures, or substances of an aggregate weight of:
 - (i) One-eighth ounce or more, containing methamphetamine, heroin, morphine, or cocaine or any of their respective salts, isomers, and salts of isomers; or
 - (ii) One-fourth ounce or more, containing any dangerous drug; or
- (c) Distributes any dangerous drug in any amount[-], except for methamphetamine as provided in section 712-B.

(2) Promoting a dangerous drug in the second degree is a class B felony.

~~[(3) Notwithstanding any law to the contrary, except for first-time offenders sentenced under section 706-622.5, if the commission of the offense of promoting a dangerous drug in the second degree under this section involved the possession or distribution of methamphetamine, or any of its salts, isomers, and salts of isomers, the person convicted shall be sentenced to an indeterminate term of imprisonment of ten years with a mandatory minimum term of imprisonment, the length of which shall be not less than six months and not greater than five years, at the discretion of the sentencing court. The person convicted shall not be eligible for parole during the mandatory period of imprisonment.]”~~

SECTION 7. Section 712-1243, Hawaii Revised Statutes, is amended to read as follows:

“§712-1243 Promoting a dangerous drug in the third degree. (1) A person commits the offense of promoting a dangerous drug in the third degree if the person knowingly possesses any dangerous drug in any amount.

(2) Promoting a dangerous drug in the third degree is a class C felony.

~~[(3) Notwithstanding any law to the contrary, except for first-time offenders sentenced under section 706-622.5, if the commission of the offense of promoting a dangerous drug in the third degree under this section involved the possession or distribution of methamphetamine, the person convicted shall be sentenced to an indeterminate term of imprisonment of five years with a mandatory minimum term of imprisonment, the length of which shall be not less than thirty days and not greater than two and a half years, at the discretion of the sentencing court. The person convicted shall not be eligible for parole during the mandatory period of imprisonment.]”~~

SECTION 8. Section 712-1249.6, Hawaii Revised Statutes, is amended to read as follows:

“§712-1249.6 Promoting a controlled substance in, on, or near schools, school vehicles, or public parks. (1) A person commits the offense of promoting a controlled substance in, on, or near schools, school vehicles, or public parks if the person knowingly:

- (a) Distributes or possesses with intent to distribute a controlled substance in any amount in or on the real property comprising a ~~[public or private elementary or secondary]~~ school or public park;
- (b) Distributes or possesses with intent to distribute a controlled substance in any amount within seven hundred and fifty feet of the real property comprising a ~~[public or private elementary or secondary]~~ school or public park; ~~or~~
- (c) Distributes or possesses with intent to distribute a controlled substance in any amount while on any school vehicle, or within ten feet of a parked school vehicle during the time that the vehicle is in service for or waiting to transport school children~~[-]; or~~
- (d) Manufactures methamphetamine or any of its salts, isomers, and salts of isomers, within seven hundred and fifty feet of the real property comprising a school or public park.

(2)¹ ~~Promoting a controlled substance in, on, or near schools, school vehicles, or public parks is a class C felony.] A person who violates subsection (1)(a), (b), or (c) is guilty of a class C felony. A person who violates subsection (1)(d) is guilty of a class A felony.~~

(3) Any person with prior conviction or convictions under ~~[this²]~~ subsection (1)(a), (b), or (c) is punishable by a term of imprisonment of not less than two years and not more than ten years.

(4) Any individual convicted under subsection (3) of this section shall not be eligible for parole until the individual has served the minimum sentence required by such subsection.

(5) For the purposes of this section, “school vehicle” means every school vehicle as defined in section 286-181 and any regulations adopted pursuant to that section.

(6) For purposes of this section, “school” means any public or private preschool, kindergarten, elementary, intermediate, middle secondary, or high school.”

PART II. TREATMENT FOR FIRST TIME NONVIOLENT DRUG OFFENDER

SECTION 9. The legislature passed Act 161, Session Laws of Hawaii 2002, (Act 161) intending to divert first-time nonviolent drug offenders to drug treatment instead of prison. During the past year, approximately two hundred fifty offenders were identified as eligible for diversion to treatment. Fewer than half of these offenders actually began treatment, with the remaining offenders returning to prison, completing their probation or parole terms, or being subject to other legal action.

Since its passage, local and state prosecutors have complained about the law, claiming that it is a “get out of jail free card” for offenders and that it has taken away discretion ordinarily reserved to the court. (See, “Final Report of the Task Force,” pp. 75-78 for a complete discussion of the controversy relating to Act 161.) The original language of Act 161 caused confusion over whether the mandatory requirement to sentence a first-time drug offender to probation took precedence over the repeat offender sentencing laws. Recently, the Hawaii Supreme Court ruled in

State of Hawaii v. Smith, No. 25726, Slip Opinion dated December 26, 2003, that the repeat offender sentencing laws took precedence over the mandatory requirement to sentence a first-time drug offender to probation.

The Task Force recommended that Act 161 should be amended to clear up the confusion regarding repeat offenders and the criteria for eligibility for drug treatment, and permit more discretion by the court in sentencing. The legislature finds that diversion to drug treatment instead of prison is consistent with the solution to cure the ice epidemic. Accordingly, the legislature intends that a broader group of nonviolent drug offenders will be eligible for consideration for probation in order to undergo drug treatment. The purpose of this amendment is to provide the court with discretion in sentencing a first-time nonviolent drug offender to probation regardless of whether the offender has prior convictions. The legislature strongly urges courts to consider transferring the most severely addicted offenders or addicted offenders with criminal histories to the jurisdiction of the drug court as a condition of being sentenced to probation.

SECTION 10. Section 353-66, Hawaii Revised Statutes, is amended by amending subsection (f) to read as follows:

~~“(f) [Parole shall not be revoked for]~~ The Hawaii paroling authority may require a paroled prisoner to undergo and complete a substance abuse treatment program when the paroled prisoner has committed a [first] violation of the terms and conditions of parole involving possession or use, not including to distribute or manufacture as defined in section 712-1240, of any dangerous drug, detrimental drug, harmful drug, intoxicating compound, marijuana, or marijuana concentrate, as defined in section 712-1240, unlawful methamphetamine trafficking as provided in section 712-B, or involving possession or use of drug paraphernalia under section 329-43.5[; provided that the person shall be required to undergo and complete a drug treatment program as a condition of continued parole]. If the [person] paroled prisoner fails to complete the [drug] substance abuse treatment program ~~[and if no other suitable treatment is amenable to the offender,]~~ or the Hawaii paroling authority determines that the paroled prisoner cannot benefit from any substance abuse program, the [person] paroled prisoner shall be subject to revocation of parole and return to incarceration. [The] As a condition of parole, the Hawaii paroling authority may require the [person to contribute] paroled prisoner to:

- (1) Be assessed by a certified substance abuse counselor for substance abuse dependency or abuse under the applicable Diagnostic and Statistical Manual and Addiction Severity Index;
- (2) Present a proposal to receive substance abuse treatment in accordance with the treatment plan prepared by a certified substance abuse counselor through a substance abuse treatment program that includes an identified source of payment for the treatment program;
- (3) Contribute to the cost of the [drug] substance abuse treatment program[;]; and
- (4) Comply with any other terms and conditions for parole.

As used in this subsection [~~“drug abuse treatment program”~~], “substance abuse treatment program” means drug or substance abuse treatment services provided outside a correctional facility~~[, but the services do not require the expenditure of state moneys beyond the limits of available appropriations.]~~ by a public, private, or nonprofit entity that specializes in treating persons who are diagnosed with having substance abuse or dependency and preferably employs licensed professionals or certified substance abuse counselors.

Nothing in this subsection shall be construed to give rise to a cause of action against the State, a state employee, or a treatment provider.”

SECTION 11. Section 706-622.5, Hawaii Revised Statutes, is amended to read as follows:

“~~[[~~§706-622.5~~]]~~ Sentencing for first-time drug offenders; expungement. (1) ~~[Notwithstanding any penalty or sentencing provision under part IV of chapter 712,]~~ Notwithstanding section 706-620(3), a person convicted for the first time for any offense under part IV of chapter 712 involving possession or use, not including to distribute or manufacture as defined in section 712-1240, of any dangerous drug, detrimental drug, harmful drug, intoxicating compound, marijuana, or marijuana concentrate, as defined in section 712-1240, unlawful methamphetamine trafficking as provided in section 712-B, or involving possession or use of drug paraphernalia under section 329-43.5, ~~[who is nonviolent, as determined by the court after reviewing the:~~

- ~~(a) Criminal history of the defendant;~~
- ~~(b) Factual circumstances of the offense for which the defendant is being sentenced; and~~
- ~~(c) Other information deemed relevant by the court;~~

shall be sentenced in accordance with subsection (2); provided that the person does not have a conviction for any violent felony for five years immediately preceding the date of the commission of the offense for which the defendant is being sentenced.] is eligible to be sentenced to probation under subsection (2) if the person meets the following criteria:

- (a) The court has determined that the person is nonviolent after reviewing the person's criminal history, the factual circumstances of the offense for which the person is being sentenced, and any other relevant information;
- (b) The person has been assessed by a certified substance abuse counselor to be in need of substance abuse treatment due to dependency or abuse under the applicable Diagnostic and Statistical Manual and Addiction Severity Index; and
- (c) Except for those persons directed to substance abuse treatment under the supervision of the drug court, the person presents a proposal to receive substance abuse treatment in accordance with the treatment plan prepared by a certified substance abuse counselor through a substance abuse treatment program that includes an identified source of payment for the treatment program.

(2) A person eligible under subsection (1) [shall] may be sentenced to probation to undergo and complete a [drug] substance abuse treatment program[-] if the court determines that the person can benefit from substance abuse treatment and, notwithstanding that the person would be subject to sentencing as a repeat offender under section 706-606.5, the person should not be incarcerated in order to protect the public. If the person fails to complete the [drug] substance abuse treatment program and [if no other suitable treatment is amenable to the offender,] the court determines that the person cannot benefit from any other suitable substance abuse treatment program, the person shall be [returned to court and] subject to sentencing under the applicable section under this part. As a condition of probation under this subsection, the court [shall require an assessment as to the treatment needs of the defendant, conducted by a person certified by the department of health to conduct the assessments. The drug treatment program for the defendant shall be based upon the assessment.] may direct the person to undergo and complete substance abuse treatment under the supervision of the drug court if the person has a history of relapse in treatment programs. The court may require other terms and conditions of probation, including requiring that the person [to] contribute to the cost of the [drug] substance

abuse treatment program[-] and comply with deadlines for entering into the substance abuse treatment program.

(3) For the purposes of this section, [~~“drug treatment program”~~] “substance abuse treatment program” means drug or substance abuse treatment services provided outside a correctional facility[, ~~but the services do not require the expenditure of state moneys beyond the limits of available appropriations.~~] by a public, private, or nonprofit entity that specializes in treating persons who are diagnosed with having substance abuse or dependency and preferably employs licensed professionals or certified substance abuse counselors.

(4) The court, upon written application from a person sentenced under this part, shall issue a court order to expunge the record of [~~arrest for that particular conviction for that particular offense~~]; provided that a person has successfully completed the substance abuse treatment program and complied with other terms and conditions of probation. A person sentenced to probation under this section shall be eligible for one time only for expungement under this subsection.

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

SECTION 12. Section 706-625, Hawaii Revised Statutes, is amended by amending subsection (7) to read as follows:

~~“(7) [Probation shall not be revoked for a first] The court may require a defendant to undergo and complete a substance abuse treatment program when the defendant has committed a violation of the terms and conditions of probation involving possession or use, not including to distribute or manufacture as defined in section 712-1240, of any dangerous drug, detrimental drug, harmful drug, intoxicating compound, marijuana, or marijuana concentrate, as defined in section 712-1240, unlawful methamphetamine trafficking as provided in section 712-B, or involving possession or use of drug paraphernalia under section 329-43.5[; provided that the person shall be required to undergo and complete a drug treatment program as a condition of continued probation]. If the [person] defendant fails to complete the [drug] substance abuse treatment program [and if no other suitable treatment is amenable to the offender,] or the court determines that the defendant cannot benefit from any other suitable substance abuse treatment program, the [person] defendant shall be subject to revocation of probation and [return to] incarceration. The court may require the [person to contribute] defendant to:~~

- (a) Be assessed by a certified substance abuse counselor for substance abuse dependency or abuse under the applicable Diagnostic and Statistical Manual and Addiction Severity Index;
- (b) Present a proposal to receive substance abuse treatment in accordance with the treatment plan prepared by a certified substance abuse counselor through a substance abuse treatment program that includes an identified source of payment for the treatment program;
- (c) Contribute to the cost of the [drug] substance abuse treatment program[-]; and
- (d) Comply with any other terms and conditions of probation.

As used in this subsection, [~~“drug treatment program”~~] “substance abuse treatment program” means drug or substance abuse treatment services provided outside a correctional facility[, ~~but the services do not require the expenditure of state moneys beyond the limits of available appropriations.~~] by a public, private, or nonprofit entity that specializes in treating persons who are diagnosed with substance abuse or dependency and preferably employs licensed professionals or certified substance abuse counselors.

Nothing in this subsection shall be construed to give rise to a cause of action against the State, a state employee, or a treatment provider.”

PART III. TORT LIABILITY FOR DRUG DEALERS

SECTION 13. The Hawaii Revised Statutes is amended by adding a new chapter to be appropriately designated and to read as follows:

**“CHAPTER
DRUG DEALER LIABILITY**

§ -1 Definitions. As used in this chapter:

“Illegal drug” means “dangerous drugs” or a “harmful drug” as defined in section 712-1240.

“Illegal drug market” means the support system of illegal drug-related operations, from production to retail sales, through which an illegal drug reaches the user.

“Illegal drug market target community” is the area described under section -5.

“Individual drug user” means the individual whose illegal drug use is the basis of an action brought under this chapter.

“Level four offense” means the illegal possession of sixteen ounces or more or the illegal distribution of four ounces or more of an illegal drug.

“Level one offense” means the illegal possession of one-fourth ounce or more, but less than four ounces, or the illegal distribution of less than one ounce of an illegal drug.

“Level three offense” means the illegal possession of eight ounces or more, but less than sixteen ounces, or the illegal distribution of two ounces or more, but less than four ounces, of an illegal drug.

“Level two offense” means the illegal possession of four ounces or more, but less than eight ounces, or the illegal distribution of one ounce or more, but less than two ounces, of an illegal drug.

“Participate in the illegal drug market” means to illegally:

- (1) Distribute an illegal drug;
- (2) Possess with an intent to distribute;
- (3) Commit an act intended to facilitate the marketing or distribution of an illegal drug;
- (4) Commit any of the marketing or distribution of an illegal drug; or
- (5) Conspire to commit any of the foregoing acts.

“Period of illegal drug use” means, in relation to the individual drug user, the entire time of the individual’s illegal use of an illegal drug. In cases where the testimony of the individual drug user is unavailable, the period of illegal drug use is presumed to commence two years before the earliest known use by the individual drug user, unless the defendant proves otherwise by clear and convincing evidence.

“Place of illegal drug activity” means, in relation to the individual drug user, the place in which the individual possesses or uses an illegal drug or in which the individual resides, attends school, or is employed during the period of the individual’s illegal drug use.

“Place of participation” means, in relation to a defendant in an action brought under this chapter, the place at which the person participates in the illegal drug market or at which the person resides, attends school, or is employed during the period of the person’s participation in the illegal drug market.

§ -2 Recovery of damages. (a) One or more of the following persons may bring an action to recover for damages caused by an individual’s use of an illegal drug:

- (1) A parent, legal guardian, child, spouse, or sibling of the individual drug user;
 - (2) An individual who was exposed to an illegal drug in utero;
 - (3) An employer of the individual drug user;
 - (4) A medical facility, insurer, governmental entity, employer, or other entity that funds a drug treatment program or employee assistance program for the individual drug user or that otherwise expended money on behalf of the individual drug user; or
 - (5) A person injured as a result of the intentional, knowing, reckless, or negligent actions of an individual drug user.
- (b) A person entitled to bring an action under this section may seek damages from one or more of the following:
- (1) A person who knowingly distributed, or knowingly participated in the chain of distribution of, the illegal drug that was used by the individual drug user;
 - (2) A person who knowingly participated in the illegal drug market, but only if:
 - (A) The place of illegal drug activity by the individual drug user is within the illegal drug market target community of the defendant;
 - (B) The defendant's participation in the illegal drug market was involved with the same type of illegal drug used by the individual drug user; and
 - (C) The defendant participated in the illegal drug market at any time during the individual drug user's period of illegal drug use.
- (c) A person entitled to bring an action under this section may recover all of the following damages:
- (1) Economic damages, including but not limited to the cost of treatment and rehabilitation, medical expenses, loss of economic or educational potential, loss of productivity, absenteeism, support expenses, accidents or injury, and any other pecuniary loss associated with the illegal drug use;
 - (2) Noneconomic damages, including but not limited to physical and emotional pain, suffering, physical impairment, emotional distress, mental anguish, disfigurement, loss of enjoyment, loss of companionship, services, and consortium, and other nonpecuniary losses associated with an individual's use of an illegal drug;
 - (3) Exemplary damages;
 - (4) Reasonable attorney's fees; and
 - (5) Costs of suit, including but not limited to reasonable expenses for expert testimony.

§ -3 Limitations for recovery of damages; state recovery. (a) An individual drug user may not bring an action for damages caused by the use of an illegal drug, except as otherwise provided in this section. An individual drug user may bring an action for damages caused by that individual's use of an illegal drug only if all of the following conditions are met:

- (1) The individual has not used an illegal drug within the six months before filing the action; and
 - (2) The individual continues to remain free of the use of an illegal drug throughout the pendency of the action.
- (b) A person entitled to bring an action under this section may seek damages only from a person who distributed, or is in the chain of distribution of, the illegal drug that was used by the individual drug user.

(c) A person entitled to bring an action under this section may recover only the following damages:

- (1) Economic damages, including but not limited to the cost of treatment, rehabilitation, and medical expenses, loss of economic or educational potential, loss of productivity, absenteeism, accidents or injury, and any other pecuniary loss associated with the person's illegal drug use;
- (2) Reasonable attorney's fees; and
- (3) Costs of suit including but not limited to reasonable expenses for expert testimony.

(d) Twenty-five per cent of any actual recovery of damages by the plaintiff under this section, whether by settlement, execution on a judgment, or otherwise, shall be turned over to the State for deposit into the general fund.

§ -4 Third party cases. Notwithstanding any other law to the contrary, no person shall be liable under this chapter under civil principles of vicarious liability.

§ -5 Illegal drug market target community. A person who participates in the illegal drug market at a level one, two, three, or four offense shall be considered to have participated in the following illegal drug market target communities:

- (1) For a level one offense, the area identified by the tax map section in which the defendant's place of participation is situated;
- (2) For a level two offense, the area identified by the tax map zone in which the defendant's place of participation is situated;
- (3) For a level three offense, the county; provided that in the case of Maui and Kauai counties, the target community shall be any island in the respective county; and
- (4) For a level four offense, the entire State.

§ -6 Joinder of parties. (a) Two or more persons may join in one action under this chapter as plaintiffs if their respective actions have at least one place of illegal drug activity in common, and if each plaintiff's illegal drug user's period of illegal drug use overlaps in time with each other.

(b) Two or more persons may be joined in one action under this chapter as defendants if those persons are liable to at least one plaintiff.

(c) A plaintiff need not be interested in obtaining and a defendant need not be interested in defending against all the relief demanded. Judgment may be given for one or more plaintiffs according to their respective rights to relief and against one or more defendants according to their respective liabilities.

§ -7 Comparative responsibility. (a) An action by an individual drug user shall be governed by the principles of comparative responsibility. Comparative responsibility attributed to the plaintiff does not bar recovery but diminishes the award of compensatory damages proportionally, according to the measure of responsibility attributed to the plaintiff.

(b) The burden of proving the comparative responsibility of the plaintiff is on the defendant, which shall be shown by clear and convincing evidence.

(c) Comparative responsibility shall not be attributed to a plaintiff who is not an individual drug user.

§ -8 Contribution among and recovery from multiple defendants. Except as otherwise provided in this chapter, part II of chapter 663 shall apply to a cause of action established by this chapter.

§ -9 Standard of proof; effect of criminal drug convictions. (a) Proof of participation in the illegal drug market in an action brought under this chapter shall be shown by clear and convincing evidence. Except as otherwise provided in this chapter, other elements of the cause of action shall be shown by a preponderance of the evidence.

(b) A person against whom recovery is sought who has a final criminal conviction pursuant to section 712-1241, 712-1242, 712-1244, 712-1245, or 712-A, 712-B, or 712-C or the Comprehensive Drug Abuse Prevention and Control Act of 1970, Public Law 91-513, 84 Stat. 1236 (21 U.S.C. §801 et seq.), arising out of an act or acts within the meaning of the term "participate in the illegal drug market" is estopped from denying participation in the illegal drug market. Such a conviction creates a rebuttable presumption that the person participated in the illegal drug market during the two years preceding the date of an act giving rise to a conviction.

(c) The absence of a criminal drug conviction of a person against whom recovery is sought does not bar an action against that person under this chapter.

§ -10 Defense. It is a defense to any action brought pursuant to this chapter that the person who possessed, distributed, or facilitated the marketing or distribution of a dangerous or harmful drug did so under authority of law as a practitioner, as an ultimate user of the drug pursuant to a lawful prescription, or as a person otherwise authorized by law.

A law enforcement officer or agency, the State, or a person acting at the direction of a law enforcement officer or agency or the State is not liable for participating in the illegal drug market if the participation is in furtherance of an official investigation.

§ -11 Statute of limitations. (a) A claim under this chapter may not be brought against a person more than four years after that person participated in the illegal drug market.

(b) The limitation period provided for in this chapter is tolled during any time there is a criminal drug offense investigation conducted against the defendant by a governmental agency or there is a criminal drug offense charge, information, or indictment pending against defendant.

§ -12 Stay of action. On motion by a governmental agency involved in a drug investigation or prosecution, an action brought under this chapter shall be stayed until the completion of the criminal investigation or prosecution that gave rise to the motion for a stay of the action.

§ -13 Effect on existing laws. This chapter is not intended to alter any law regarding intra-family tort immunity."

PART IV. LAWS AFFECTING PUBLIC SCHOOLS

SECTION 14. Section 302A-1134.6, Hawaii Revised Statutes, is amended to read as follows:

"[§302A-1134.6] Zero tolerance policy. (a) Any child who possesses, sells, or uses a dangerous weapon or switchblade knife, while attending school or while attending department-supervised activities held on or off school property, may be excluded from attending school for up to ninety-two school days, as determined by the principal and approved by the superintendent or other individuals designated pursuant to rules adopted by the board.

(b) [Any] Except as provided in subsection (f), any child who possesses, sells, consumes, or uses intoxicating liquor or ~~[illicit]~~ illegal drugs, while attending school or while attending department-supervised activities held on or off school property, may be excluded from attending school for up to ninety-two school days, as determined by the principal and approved by the superintendent or other individuals designated pursuant to rules adopted by the board.

(c) [Any] Except as provided in subsection (f), any child who reasonably appears to have consumed or used intoxicating liquor or ~~[illicit]~~ illegal drugs prior to attending school or attending department-supervised activities held on or off school property, may be excluded from attending school for up to ninety-two school days, as determined by the principal and approved by the superintendent or other individuals designated pursuant to rules adopted by the board.

(d) In any case of exclusion from school, the due process procedures as set forth in the provisions of Hawaii administrative rules relating to student discipline shall apply.

(e) If a child is excluded from attending school for more than ten days, the superintendent or the superintendent's designee shall ensure that substitute educational activities or other appropriate assistance are provided, such as referral for appropriate intervention and treatment services, as determined by the principal in consultation with the appropriate school staff.

(f) Prior to implementing any decision to exclude the child from attending school due to a violation of subsection (b) or (c), the child shall be referred to and assessed by a certified substance abuse treatment counselor on a priority basis to determine whether the child needs treatment for substance abuse or dependency. If the assessment determines that the child:

(1) Needs treatment for substance abuse or dependency and:

(A) If outpatient treatment is immediately available or the child is placed into a residential treatment facility, the child shall not be excluded from school and all disciplinary action shall be deferred; provided that the child:

(i) Enters into treatment;

(ii) Complies with the terms and conditions of the treatment program; and

(iii) Remains in treatment until discharged from treatment.

If the child completes the treatment program, no disciplinary action based on the original offense shall be taken and all records of disciplinary action relating to the original offense shall be expunged; or

(B) If no treatment program is immediately available, the child shall not be excluded from attending school, but may be transferred to an alternative learning center, pending admission to a treatment program. Disciplinary action shall be deferred in accordance with paragraph (1)(A) during the pendency of the child's treatment and all records of disciplinary action relating to the original offense shall be expunged upon completion of the treatment program; or

(2) Does not need treatment for substance abuse or dependency, disciplinary action of exclusion from school may be taken in accordance with the department's rules.

Nothing in this subsection prohibits the principal from suspending the child pursuant to the crisis suspension rules of the department for a period not to exceed ten days, provided the principal commences the referral and assessment process required under this section during the crisis suspension period.

[(f)] (g) For purposes of this section:

[(1)] “Dangerous weapon” means a dirk, dagger, butterfly knife, blackjack, slug shot, billy, metal knuckles, or other instrument whose sole design and purpose is to inflict bodily injury or death; provided that firearms are excluded from this definition[;].

[(2)] ~~“Illicit drugs”~~ “Illegal drugs” means [substances,] the possession, distribution, ingestion, manufacture, sale, or delivery of substances which are prohibited under chapter 329 and chapter 712, part IV[; and].

[(3)] “Switchblade knife” is as defined in section 134-52.

[(g)] (h) The board of education shall adopt rules in accordance with chapter 91 to implement[[]this section[]].”

PART V. INSURANCE COVERAGE FOR SUBSTANCE ABUSE

SECTION 15. The legislature finds that persons addicted to crystal methamphetamine may pose a threat to public safety. Chronic ice addicts may become dangerous, engage in violent conduct, or exhibit psychotic and paranoid behavior. Ice addicts also may be driven to steal property in order to generate revenue to support their addiction. Law enforcement estimates that ninety per cent of property crimes are committed in Hawaii due to ice addicts trying to find a revenue source to support their addiction. (See, “Final Report of the Task Force,” p. 49).

Treatment for ice addiction is essential if the ice epidemic is to be stopped. Treatment for ice addiction must be sufficient in terms of duration and type of treatment in order for it to be successful.

Current health plans offer limited substance abuse treatment benefits. These benefits are insufficient to treat the specific nature of ice addiction and ice addicts typically are also addicted to other substances. The restrictions on benefit levels and treatment episodes pose barriers to effective and appropriate treatment for ice addiction.

Treatment for persons addicted to ice and other substances must be on parity with treatment for any other physical disease or illness as such treatment will not be a significant burden on private insurance plan members. Private insurance plans report low utilization for substance abuse treatment and less than one per cent of benefits paid are attributable to substance abuse treatment. (See, “Final Report of Task Force,” pp. 84-89 for a complete discussion of health insurance benefits for substance abuse treatment.)

The purpose of this part is to ensure that substance abuse addiction is covered under a health insurance plan in the same way as a physical disease or illness. Parity is extended to alcohol and drug abuse because ice addicts may use multiple substances as part of their addiction.

SECTION 16. Chapter 431M, Hawaii Revised Statutes, is amended by adding a new section to be appropriately designated and to read as follows:

“§431M- Parity treatment for alcohol or drug dependency. Unless greater benefits are required by this chapter for alcohol and substance services and benefits, services and benefits provided by health insurance plans subject to section 431M-2 for drug and alcohol dependency shall be equal to and co-extensive with health insurance coverage for physical disease and illnesses. Nothing in this section shall require the health insurance plan to provide residential treatment benefits except as it may provide for physical disease and illnesses and in accordance with an approved treatment plan by the health plan provider.”

SECTION 17. Section 16 shall be exempt from the impact assessment report by the auditor under section 23-51, Hawaii Revised Statutes. The legislature finds

that an emergency situation exists in the state that demands an immediate legislative response, and that the slight financial impact of a rise in premiums is likely to be incalculable (Auditor Report No. 88-6).

SECTION 18. The treatment of drug and alcohol dependency provided under medical plans participating in QUEST and the fee for services program administered by the department of human services shall be equal to and co-extensive with QUEST and fee for services program coverage for physical disease and illnesses. Nothing in this section shall require QUEST and the fee for services program to provide residential treatment benefits except as it may provide for physical disease and illnesses.

PART VI. CIVIL COMMITMENT FOR SUBSTANCE ABUSE

SECTION 19. The Task Force received testimony from many families about their efforts to obtain help for a family member addicted to drugs. These families reported that they were forced to have the addicted family member arrested as a wake-up call for the ice addict to recognize that the addict needed treatment. The legislature finds that families should not have to resort to using the criminal justice system to obtain help for an addicted family member. The purpose of this part is to enact an expedited process that permits family members to obtain a court order to send an addicted family member to involuntary outpatient treatment.

SECTION 20. Chapter 334, Hawaii Revised Statutes, is amended by adding a new part to be appropriately designated and to read as follows:

“PART . CIVIL COMMITMENT FOR SUBSTANCE ABUSE OUTPATIENT TREATMENT

§334-A Definitions. As used in this part:

“Family member” means any individual who is a member of the immediate family of the person who is the subject of the petition, including spouse, child, parent, grandparent, or any related individual who resides in the same household as the individual who is the subject of the petition.

“Outpatient treatment” includes any substance abuse treatment provided through individual or group therapy, day or partial day programs, and intensive day treatment and which does not require the individual to reside on a twenty-four-hour basis in the facility for more than three days to benefit from the treatment program.

“Petitioner” means the family member who applies to the court for an order to require an individual to enter into an outpatient treatment program.

“Respondent” means the individual who is eighteen years of age or older who is the subject of the petition for a court order to require the individual to enter into an outpatient treatment program.

§334-B Petition. Any family member may petition the family court for an order requiring a respondent to enter into an outpatient treatment program for substance abuse. The petition shall be in writing under penalty of perjury and include facts relating to:

- (1) The conduct of the respondent that indicates substance abuse or addiction;
- (2) The respondent’s history of substance abuse, treatment, and relapse;
- (3) The effects of the respondent’s conduct on the family;

- (4) The petitioner's good faith belief that the respondent poses an imminent danger to self or to others if the respondent does not receive treatment;
- (5) The availability of treatment and financial resources to pay for treatment; and
- (6) Any other reason for seeking court intervention.

§334-C Notice of hearing and service of petition on respondent. The court shall set a time and date for hearing on the petition, within ten days of the filing of the petition. The notice of hearing and petition shall be served on the respondent.

§334-D Hearing and court order. (a) The court shall conduct a hearing to consider all facts relating to the petition. The court may postpone the hearing and order the respondent to be assessed for substance abuse or addiction by a certified substance abuse counselor, at the petitioner's expense.

(b) The court may grant the petition if it finds clear and convincing evidence that:

- (1) The respondent has a history of substance abuse and refuses to enter treatment voluntarily;
- (2) The respondent has a family support system that will encourage and participate in the respondent's treatment program;
- (3) The respondent can benefit from outpatient treatment and is capable of surviving safely in the community with the family support system and if outpatient treatment is received;
- (4) The respondent or the petitioner has financial resources to pay for the outpatient treatment program;
- (5) The respondent poses an imminent danger to self or to others if treatment is not received; and
- (6) The respondent understands the nature of the proceeding and the effect of the court order to enter into outpatient treatment.

(c) The court order shall be limited to ninety days of outpatient treatment. Upon renewal of the petition, the court may extend the petition for an additional ninety days.

§334-E Treatment costs, fees, and costs for petition process. The petitioner shall bear all fees and costs related to bringing the petition. The petitioner or respondent shall bear all costs of private treatment. Nothing in this part authorizes publicly funded substance abuse treatment. However, if the respondent is eligible to receive publicly funded treatment and such a program is available for the respondent, the court may order the treatment in such a program.

§334-F Discharge. If the respondent successfully completes the outpatient treatment program and is discharged from the program prior to the end of the court-ordered treatment period, the court order shall automatically lapse.

§334-G Failure to comply with court order. The court may impose sanctions for violation of the court order.

§334-H Application. Notwithstanding any other law to the contrary, this part shall apply to all petitions filed by family members seeking involuntary outpatient commitment of the respondent with substance abuse as the primary diagnosis."

PART VII. DRUG REHABILITATION HOMES

SECTION 21. The legislature finds that recovering addicts are likely to relapse from treatment if they return to the environment or community that contributed to the addiction. An essential part of the continuum of treatment includes access to clean and sober homes or transitional living homes that support the recovering addict and provide the recovering addict with a new community in which to live. The legislature finds that existing facilities for clean and sober homes or transitional living centers are limited and insufficient to handle the numbers of recovering addicts who can benefit from this living arrangement. Nearly all existing homes are independently operated and financially self-sufficient, without significant burden on public resources. Accordingly, the legislature finds that amendments to existing zoning laws would encourage the development of more clean and sober homes or transitional living homes as well as increase capacities for such homes.

SECTION 22. Chapter 46, Hawaii Revised Statutes, is amended by adding a new section to be appropriately designated and to read as follows:

“§46- Drug rehabilitation homes; permitted use in residential areas.

(a) For purposes of section 46-4, a drug rehabilitation home shall be considered a residential use of property and shall be a permitted use in residentially designated zones including, but not limited to, zones for single-family dwellings. No conditional use, permit, variance, or special exception shall be required for a residence used as a drug rehabilitation home.

(b) No drug rehabilitation home under subsection (a) shall be permitted unless a public informational meeting is first held in the affected community by the department of health.

(c) For purposes of this section, “drug rehabilitation home” means any facility that accommodates no more than ten unrelated persons and is operated by a community-based nonprofit agency licensed by the department of health, whose purpose is to facilitate the development of residential supportive living homes for persons in recovery from substance abuse. Drug rehabilitation homes include “clean and sober homes” that provide a structured environment of clean and sober living conditions to sustain recovery and “transitional living homes” that provide a supervised structured environment of clean and sober living conditions to sustain recovery.”

PART VIII. DRUG NUISANCE REMOVAL

SECTION 23. Section 322-1, Hawaii Revised Statutes, is amended to read as follows:

“§322-1 Removal, prevention. The department of health and its agents shall examine into all nuisances, foul or noxious odors, gases or vapors, water in which mosquito larvae exist, sources of filth, and all causes of sickness or disease, on shore, and in any vessel, which may be known to them or brought to their attention, which in their opinion are dangerous or injurious to health, and into any and all conditions created or existing which cause or tend to cause sickness or disease or to be dangerous or injurious to health, and shall cause the same to be abated, destroyed, removed, or prevented.

For purposes of this section, a nuisance shall include toxic materials that are used in or by-products of the manufacture or conversion of methamphetamine, and clandestine drug labs that manufacture methamphetamine.”

PART IX. CITIZEN EMPOWERMENT

SECTION 24. The legislature sympathizes with the many citizens who complained about the perceptions that law enforcement was not being responsive to drug activities within their communities. While the drug interdiction activities of law enforcement must necessarily remain covert in order to protect the investigative process, the legislature finds that improved communication between law enforcement and the communities will aid in the identification and prosecution of drug traffickers. Moreover, the legislature finds that communities should be empowered to assist law enforcement in containing illegal drug activities in their neighborhoods. Accordingly, the legislature finds that efforts by citizens to abate drug trafficking activities in their neighborhoods through the filing of private citizen complaints for nuisance abatement under part IV of chapter 712 should be supported by changes in the nuisance abatement laws to permit recovery for attorneys' fees and to protect citizens who complain about such nuisances in the same way as victims of crimes are protected.

The legislature further finds that the drug abatement activities undertaken by many community organizations, private organizations, and state and local government offices require a centralized coordinating agency to facilitate information sharing and technical support. The momentum started by community mobilization efforts to create public awareness of the ice epidemic is crucial to solving this public health crisis as well as to assist law enforcement in drug interdiction. The legislature designates the department of public safety to work with the communities on action plans, educate the communities about drug interdiction activities, assist communities with complaints regarding law enforcement's responsiveness to drug activities within the community, facilitate information sharing and provide technical support.

SECTION 25. Chapter 712, part V, Hawaii Revised Statutes, is amended by adding a new section to be appropriately designated and to read as follows:

"§712- Citizen's rights. Any citizen who brings a nuisance abatement suit against a place used for the purpose of committing drug offenses under part IV of this chapter or who files a complaint with the local police or drug nuisance abatement unit of the department of the attorney general shall be entitled to the same rights and protections of victims and witnesses in criminal proceedings in accordance with chapter 801D."

SECTION 26. Section 26-14.6, Hawaii Revised Statutes, is amended to read as follows:

"§26-14.6 Department of public safety. (a) The department of public safety shall be headed by a single executive to be known as the director of public safety.

(b) The department of public safety shall be responsible for the formulation and implementation of state policies and objectives for correctional, security, law enforcement, and public safety programs and functions, for the administration and maintenance of all public or private correctional facilities and services, for the service of process, and for the security of state buildings.

(c) Effective July 1, 1990, the Hawaii paroling authority and the crime victim compensation commission are placed within the department of public safety for administrative purposes only.

(d) Effective July 1, 1990, the functions and authority heretofore exercised by:

- (1) The department of corrections relating to adult corrections and the intake service centers;
- (2) The judiciary relating to the sheriff's office and judiciary security personnel; and
- (3) The department of the attorney general relating to state law enforcement officers and narcotics enforcement investigators with the narcotics enforcement division,

shall be transferred to the department of public safety.

(e) Effective July 1, 1990, the functions and authority heretofore exercised by the department of health pursuant to chapters 329 and 329C, with the exception of sections 329-2, 329-3, and 329-4(3) to (8), shall be transferred to the department of public safety.

(f) Effective July 1, 1990, the functions, authority, and obligations, together with the limitations imposed thereon and the privileges and immunities conferred thereby, exercised by a "sheriff", "sheriffs", a "sheriff's deputy", "sheriff's deputies", a "deputy sheriff", "deputy sheriffs", or a "deputy", under sections 21-8, 47-18, 88-51, 105-4, 134-11, 134-51, 183D-11, 187A-14, 201G-55, 201G-74, 231-25, 281-108, 281-111, 286-52, 286-52.5, 321-1, 322-6, 325-9, 325-80, 353-11, 383-71, 438-5, 445-37, 482E-4, 485-6, 501-42, 501-171, 501-218, 521-78, 578-4, 584-6, 587-33, 603-29, 604-6.2, 606-14, 607-2, 607-4, 607-8, 633-8, 634-11, 634-12, 634-21, 634-22, 651-33, 651-37, 651-51, 654-2, 655-2, 657-13, 660-16, 666-11, 666-21, 803-23, 803-34, 803-35, 804-14, 804-18, 804-41, 805-1, 806-71, and 832-23 shall be exercised to the same extent by the department of public safety.

(g) Effective January 1, 1993, the functions and authority heretofore exercised by the attorney general and the department of the attorney general relating to the executive security officers shall be transferred to the department of public safety.

(h) Effective July 1, 1999, the functions and authority heretofore exercised by the director of public safety and the department of public safety relating to after hours security contracts at department of education facilities, except for the security functions being performed by employees of the public library system as well as the contractual security services for the libraries, shall be transferred to the department of education.

(i) Effective January 1, 1993, the functions and authority heretofore exercised by the director of health and the department of health relating to uniformed security employees and security contracts at various state hospitals throughout the State shall be transferred to the department of public safety.

(j) Effective January 1, 1993, the functions and authority heretofore exercised by the director of human services and the department of human services relating to contractual security guard services shall be transferred to the department of public safety.

(k) Effective July 1, 1994, the functions and authority heretofore exercised by the adjutant general relating to security for national guard and state civil defense facilities in the Diamond Head complex, for after work hours, shall be transferred to the department of public safety.

(l) Effective July 1, 2002, the functions and authority heretofore exercised by the director of public safety and the department of public safety relating to after hours security contracts at department of education facilities, including all security functions being performed by employees of the public library system, as well as the contractual security services for the libraries, shall be transferred to the department of education and the public library system as appropriate.

(m) The department shall coordinate drug abatement efforts of the communities with the state, counties, and community agencies, by:

- (1) Facilitating sharing of resources and information;
- (2) Providing technical support for community mobilization groups;

- (3) Establishing community action plans for drug education, awareness, and prevention;
- (4) Facilitating problem solving in the delivery of law enforcement services by state and local agencies to the community.

The department shall submit an annual report to the legislature twenty days before the convening of each regular session, on the activities of the department relating to this mandate."

SECTION 27. Section 712-1276, Hawaii Revised Statutes, is amended to read as follows:

"§712-1276 Costs and expenses. For any attorneys' fees, costs, or expenses incurred in the closing of the building, premises, or place and keeping it closed, or incurred in enforcing the injunction prohibiting the person or persons causing the nuisance from residing or entering into the building, premises, or place in or upon which the nuisance exists, as well as the attorneys' fees, costs, and expenses incurred by the party bringing the action, a reasonable sum shall be allowed by the court."

SECTION 28. Section 712-1278, Hawaii Revised Statutes, is amended to read as follows:

"§712-1278 Fine, costs, lien on place. Any attorneys' fees, costs, expenses, and fines imposed against any owner of a business, premises or place in any proceedings under this part shall be a lien upon such business, premises, or place, to the extent of the interest of such person therein, enforceable and collectible by execution issued by the order of the court."

SECTION 29. This Act does not affect rights and duties that matured, penalties that were incurred, and proceedings that were begun, before its effective date.

SECTION 30. If any provision of this Act, or the application thereof to any person or circumstance is held invalid, the invalidity does not affect other provisions or applications of the Act, which can be given effect without the invalid provision or application, and to this end the provisions of this Act are severable.

SECTION 31. Statutory material to be repealed is bracketed and stricken. New statutory material is underscored.³

SECTION 32. In codifying the new sections added by sections 3, 13, and 20 of this Act, the revisor of statutes shall substitute appropriate section numbers for the letters or numbers used in designating the new sections in this Act.

SECTION 33. This Act shall take effect on July 1, 2004; provided sections 16 and 18 shall take effect on July 1, 2005 and be repealed on June 30, 2011; and provided further that the new subsection (m) added to Section 26-14.6, Hawaii Revised Statutes, in section 26⁴ of this Act shall be repealed on June 30, 2007.

(Vetoed by Governor and veto overridden by Legislature on April 30, 2004.)

Notes

- 1. So in original.
- 2. Prior to amendment "section" appeared here.
- 3. Edited pursuant to HRS §23G-16.5.
- 4. "Section 26" substituted for "section 25".