

ACT 230

H.B. NO. 3256

A Bill for an Act Relating to the Penal Code.

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

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

“§706- Sentencing for first-time property offenders; expungement.

(1) Notwithstanding section 706-620(3), a person convicted for the first time of any class C felony property offense under chapter 708 who has not previously been sentenced under section 706-606.5, section 706-622.5, or this section 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;
- (c) The court has determined that the offense for which the person is being sentenced is related to the person’s substance abuse dependency or addiction;
- (d) The court has determined that the person is genuinely motivated to obtain and maintain substance abuse treatment, based upon consideration of the person’s history, including whether substance abuse treat-

ment has previously been afforded to the person, and an appraisal of the person's current circumstances and attitude; and

- (e) 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) may be sentenced to probation to undergo and complete a 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 to protect the public. If the person fails to complete the substance abuse treatment program and the court determines that the person cannot benefit from any other suitable substance abuse treatment program, the person shall be sentenced as provided in this part. As a condition of probation under this subsection, the court may direct the person to undergo and complete substance abuse treatment under the supervision of the drug court if the person has a history or relapse in treatment programs. The court may require other terms and conditions of probation, including requiring that the person contribute to the cost of the substance abuse treatment program and comply with deadlines for entering into the substance abuse treatment program.

(3) The court, upon written application from a person sentenced under this part, shall issue a court order to expunge the record of 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 expungement under this subsection only if the person has not been previously convicted of a felony offense in this or another jurisdiction.

(4) 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.

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

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

“§708- Burglary offenses; intent to commit therein a crime against a person or against property rights. A person engages in conduct “with intent to commit therein a crime against a person or against property rights” if the person formed the intent to commit within the building a crime against a person or property rights before, during, or after unlawful entry into the building.

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

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

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

- (a) There was a social gathering of invited guests at the dwelling the defendant entered;
- (b) The defendant intended to join the social gathering; and
- (c) The defendant had no intent to commit any unlawful act other than the entry.”

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

“§708- Unauthorized entry into motor vehicle in the second degree.

(1) A person commits the offense of unauthorized entry into a motor vehicle in the second degree if the person intentionally or knowingly enters into a motor vehicle without being invited, licensed, or otherwise authorized to do so.

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

SECTION 4. 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 Methamphetamine trafficking in the first degree. (1) A person commits the offense of methamphetamine trafficking in the first degree if the person knowingly:

- (a) Possesses one or more preparations, compounds, mixtures, or substances of an aggregate weight of one ounce or more containing methamphetamine or any of its salts, isomers, and salts of isomers;
- (b) Distributes one or more preparations, compounds, mixtures, or substances of an aggregate weight of one-eighth ounce or more containing methamphetamine or any of its salts, isomers, and salts of isomers;
- (c) Distributes methamphetamine in any amount to a minor; or
- (d) Manufactures methamphetamine in any amount.

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

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

- (a) If the person has one prior conviction for methamphetamine trafficking pursuant to this section or section 712-B, the mandatory minimum term of imprisonment shall be not less than six years, eight months and not greater than thirteen years, four months;
- (b) If the person has two prior convictions for methamphetamine trafficking pursuant to this section or section 712-B, the mandatory minimum term of imprisonment shall be not less than thirteen years, four months and not greater than twenty years; or
- (c) If the person has three or more prior convictions for methamphetamine trafficking pursuant to this section or section 712-B, the mandatory minimum term of imprisonment shall be twenty years.

§712-B Methamphetamine trafficking in the second degree. (1) A person commits the offense of methamphetamine trafficking in the second degree if the person knowingly distributes methamphetamine in any amount.

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

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

- (a) If the person has one prior conviction for methamphetamine trafficking pursuant to this section or section 712-A, the mandatory minimum term of imprisonment shall be not less than three years, four months and not greater than six years, eight months;
- (b) If the person has two prior convictions for methamphetamine trafficking pursuant to this section or section 712-A, the mandatory minimum term of imprisonment shall be not less than six years, eight months and not greater than ten years; or
- (c) If the person has three or more prior convictions for methamphetamine trafficking pursuant to this section or section 712-A, the mandatory minimum term of imprisonment shall be ten years.

§712-C Methamphetamine trafficking; restitution and reimbursement.

When sentencing a defendant convicted of methamphetamine trafficking pursuant to section 712-A or 712-B, the court may order restitution or reimbursement to the State or appropriate county government for the cost incurred for any cleanup associated with the manufacture or distribution of methamphetamine and to any other person injured as a result of the manufacture or distribution of methamphetamine.”

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

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

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

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

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

(2) Upon suspension of further proceedings in the prosecution, the court shall appoint three qualified examiners in felony cases and one qualified examiner in nonfelony cases to examine and report upon the physical and mental condition of the defendant. In felony cases the court shall appoint at least one psychiatrist and at least one licensed psychologist. The third member may be [~~either~~] a psychiatrist, licensed

psychologist, or qualified physician. One of the three shall be a psychiatrist or licensed psychologist designated by the director of health from within the department of health. In nonfelony cases the court may appoint either a psychiatrist or a licensed psychologist. All examiners shall be appointed from a list of certified examiners as determined by the department of health. The court, in appropriate circumstances, may appoint an additional examiner or examiners. The examination may be conducted on an out-patient basis or, in the court's discretion, when necessary the court may order the defendant to be committed to a hospital or other suitable facility for the purpose of the examination for a period not exceeding thirty days, or such longer period as the court determines to be necessary for the purpose. The court may direct that one or more qualified physicians or psychologists retained by the defendant be permitted to witness ~~[and participate in]~~ the examination. As used in this section, the term "licensed psychologist" includes psychologists exempted from licensure by section 465-3(a)(3).

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

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

- (a) A description of the nature of the examination;
- (b) A diagnosis of the physical or mental condition of the defendant;
- (c) An opinion as to the defendant's capacity to understand the proceedings against the defendant and to assist in the defendant's own defense;
- (d) An opinion as to the extent, if any, to which the capacity of the defendant to appreciate the wrongfulness of the defendant's conduct or to conform the defendant's conduct to the requirements of law was impaired at the time of the conduct alleged;
- (e) When directed by the court, an opinion as to the capacity of the defendant to have a particular state of mind ~~[which]~~ that is required to establish an element of the offense charged; and
- (f) Where more than one examiner is appointed, a statement that the diagnosis and opinion rendered were arrived at independently of any other examiner, unless there is a showing to the court of a clear need for communication between or among the examiners for clarification. A description of the communication shall be included in the report. After all reports are submitted to the court, examiners may confer without restriction."

2. By amending subsection (6) to read:

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

3. By amending subsection (8) to read:

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

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

“§704-406 Effect of finding of unfitness to proceed. (1) If the court determines that the defendant lacks fitness to proceed, the proceeding against the defendant shall be suspended, except as provided in section 704-407, and the court shall commit the defendant to the custody of the director of health to be placed in an appropriate institution for detention, care, and treatment. If the court is satisfied that the defendant may be released on condition without danger to the defendant or to the person or property of others, the court shall order the defendant’s release, which shall continue at the discretion of the court[;] on conditions the court determines necessary. A copy of the report filed pursuant to section 704-404 shall be attached to the order of commitment or order of [~~conditional~~] release[.] on conditions.

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

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

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

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

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

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

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

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

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

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

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

“§704-407 Special [post-commitment or post-conditional-release] hearing[.] following commitment or release on conditions. (1) At any time after commitment as provided in section 704-406, the defendant or the defendant’s counsel or the director of health may apply for a special post-commitment or post-release hearing. If the application is made by or on behalf of a defendant not represented by counsel, the defendant shall be afforded a reasonable opportunity to obtain counsel, and if the defendant lacks funds to do so, counsel shall be assigned by the court. The application shall be granted only if the counsel for the defendant satisfies the court by affidavit or otherwise that, as an attorney, the counsel has reasonable grounds for a good faith belief that the counsel’s client has an objection based upon legal grounds to the charge.

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

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

- (a) Order the defendant to be discharged [or, subject];
- (b) Subject to the law governing [the] involuntary [hospitalization or conditional-release] civil commitment of persons [suffering from] affected by a physical or mental disease, disorder, or defect, order the defendant to be committed to the custody of the director of health to be placed in an appropriate institution for detention, care, and treatment; or
- (c) Subject to the law governing involuntary outpatient treatment, order the defendant to be released on such conditions as the court deems necessary.”

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

“§704-408 Determination of irresponsibility. If the report of the examiners filed pursuant to section 704-404, or the report of examiners of the defendant’s choice under section 704-409, states that the defendant at the time of the conduct alleged [suffered from] was affected by a physical or mental disease, disorder, or defect [which] that substantially impaired the defendant’s capacity to appreciate the wrongfulness of the defendant’s conduct or to conform the defendant’s conduct to the requirements of law, the court shall submit the defense of physical or mental disease, disorder, or defect to the jury or the trier of fact at the trial of the charge against the defendant.”

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

“§704-411 Legal effect of acquittal on the ground of physical or mental disease, disorder, or defect excluding responsibility; commitment; conditional release; discharge; procedure for separate post-acquittal hearing. (1) When a defendant is acquitted on the ground of physical or mental disease, disorder, or defect excluding responsibility, the court [shall], on the basis of the report made

pursuant to section 704-404, if uncontested, or the medical or psychological evidence given at the trial or at a separate hearing, shall make an order as follows:

- (a) The court shall order the defendant to be committed to the custody of the director of health to be placed in an appropriate institution for custody, care, and treatment if the court finds that the defendant ~~[presents];~~
 - (i) Is affected by a physical or mental disease, disorder, or defect;
 - (ii) Presents a risk of danger to [oneself] self or others [and that the defendant is]; and
 - (iii) Is not a proper subject for conditional release; provided that the director of health shall place defendants charged with misdemeanors or felonies not involving violence or attempted violence in the least restrictive environment appropriate in light of the defendant's treatment needs and the need to prevent harm to the person confined and others; [ø]
- (b) The court shall order the defendant to be released on such conditions as the court deems necessary if the court finds that the defendant is affected by physical or mental disease, disorder, or defect and that the defendant presents a danger to [oneself] self or others, but that the defendant can be controlled adequately and given proper care, supervision, and treatment if the defendant is released on condition; or
- (c) The court shall order the defendant discharged [~~from custody~~] if the court finds that the defendant is no longer affected by physical or mental disease, disorder, or defect[;] or, if so affected, that the defendant no longer presents a danger to [oneself] self or others and is not in need of care, supervision, or treatment.

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

- (3) When ordering a hearing pursuant to subsection (2):
 - (a) In nonfelony cases, the court shall appoint a qualified examiner to examine and report upon the physical and mental condition of the defendant. The court may appoint either a psychiatrist or a licensed psychologist. The examiner may be designated by the director of health from within the department of health. The examiner shall be appointed from a list of certified examiners as determined by the department of health. The court, in appropriate circumstances, may appoint an additional examiner or examiners[-]; and
 - (b) In felony cases, the court shall appoint three qualified examiners to examine and report upon the physical and mental condition of the defendant. In each case, the court shall appoint at least one psychiatrist and at least one licensed psychologist. The third member may be [~~either~~] a psychiatrist, a licensed psychologist, or a qualified physician. One of the three shall be a psychiatrist or licensed psychologist designated by the director of health from within the department of health. The three examiners shall be appointed from a list of certified examiners as determined by the department of health.

To facilitate the examination and the proceedings thereon, the court may cause the defendant, if not then confined, to be committed to a hospital or other suitable facility for the purpose of examination for a period not exceeding thirty days or such longer period as the court determines to be necessary for the purpose upon written findings for good cause shown. The court may direct that qualified physi-

cians or psychologists retained by the defendant be permitted to witness ~~[and participate in]~~ the examination. The examination and report and the compensation of persons making or assisting in the examination shall be in accord with section 704-404(3), (4)(a) and (b), (6), (7), (8), and (9). As used in this section, the term "licensed psychologist" includes psychologists exempted from licensure by section 465-3(a)(3).

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

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

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

"§704-412 Committed person; application for conditional release or discharge; by the director of health; by the person. (1) After the expiration of at least ninety days following the order of commitment pursuant to section 704-411, if the director of health is of the opinion that the person committed to ~~[his]~~ the director's custody is still affected by a physical or mental disease, disorder, or defect and may be released on condition or discharged without danger to ~~[himself]~~ self or to the person or property of others~~[-he]~~ or that the person is no longer affected by a physical or mental disease, disorder, or defect, the director shall make application for the discharge or conditional release of [such] the person in a report to the court [by] from which ~~[such]~~ the person was committed and shall transmit a copy of the application and report to the prosecuting attorney of the county from which the [defendant] person was committed. The [defendant] person shall be given notice of such application.

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

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

"§704-413 Conditional release; application for modification or discharge; termination of conditional release and commitment. (1) Any person released ~~[on condition]~~ pursuant to section 704-411 shall continue to receive mental health or other ~~[appropriate]~~ treatment and care deemed appropriate by the director of health until discharged from conditional release. The person shall follow all

prescribed treatments and take all prescribed medications according to the instructions of the person's treating mental health professional. If any mental health professional treating any conditionally released person believes either the person is ~~[either]~~ not complying with the requirements of this section~~;~~ or there is other evidence that hospitalization is appropriate, the mental health professional shall report the matter to the probation officer of the conditionally released person. The probation officer may order the conditionally released person to be hospitalized for a period not to exceed seventy-two hours if the probation officer has probable cause to believe the person has violated the requirements of this subsection. No person shall be hospitalized beyond the seventy-two hour period, as computed pursuant to section 1-29, unless a hearing has been held pursuant to subsection (3).

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

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

- (a) The person is still affected by a physical or mental disease, disorder, or defect, and the conditions of release have not been fulfilled; or [that for]
- (b) For the safety of [such] the person or others [his], the person's conditional release should be revoked,

the court may forthwith modify the conditions of release or order the person to be committed to the custody of the director of health, subject to discharge or release only in accordance with the procedure prescribed in section 704-412."

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

"§704-414 Procedure upon application for discharge, conditional release, or modification of conditions of release. Upon filing of an application pursuant to section 704-412 for discharge or conditional release, or upon the filing of an application pursuant to section 704-413 for discharge or for modification of conditions of release, the court shall appoint three qualified examiners in felony cases and one qualified examiner in nonfelony cases to examine and report upon the physical and mental condition of the defendant. In felony cases the court shall appoint at least one psychiatrist and at least one licensed psychologist. The third member may be ~~[either]~~ a psychiatrist, a licensed psychologist, or a qualified physician. One of the three shall be a psychiatrist or licensed psychologist designated by the director of health from within the department of health. The examiners shall be appointed from a list of certified examiners as determined by the department of health. To facilitate the examination and the proceedings thereon, the court may cause the defendant, if not then confined, to be committed to a hospital or other suitable facility for the purpose of the examination and may direct that qualified

physicians or psychologists retained by the defendant be permitted to witness [and participate in] the examination. The examination and report and the compensation of persons making or assisting in the examination shall be in accord with section 704-404(3), (4)(a) and (b), (6), (7), (8), and (9). As used in this section, the term "licensed psychologist" includes psychologists exempted from licensure by section 465-3(a)(3)."

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

"§704-415 Disposition of application for discharge, conditional release, or modification of conditions of release. (1) If the court is satisfied [by] from the report filed pursuant to section 704-414, and such testimony of the reporting examiners as the court deems necessary, that:

- (a) The person is affected by a physical or mental disease, disorder, or defect and the discharge, conditional release, or modification of conditions of release applied for may be granted without danger to the committed or conditionally released person or to the person or property of others[;]; or
- (b) The person is no longer affected by a physical or mental disease, disorder, or defect.

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

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

- (a) Discharged;
- (b) Released on such conditions as the court determines to be necessary[;]; or [~~shall be recommitted~~]
- (c) Recommitted to the custody of the director of health, subject to discharge or release only in accordance with the procedure prescribed in section 704-412."

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

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

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

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

1. By amending subsection (2) to read:

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

if the defendant or the prosecuting attorney so requests, to controvert or supplement them. The court shall amend or order the amendment of the report upon finding that any correction, modification, or addition is needed and, where appropriate, shall require the prompt preparation of an amended report in which material required to be deleted is completely removed or other amendments, including additions, are made.”

2. By amending subsection (4) to read:

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

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

“**§706-605 Authorized disposition of convicted defendants.** (1) Except as provided in parts II and IV ~~[of this chapter]~~ or in section 706-647 and subsections (2), ~~[and] (6), and (7) [of this section]~~, and subject to the applicable provisions of this Code, the court may sentence a convicted defendant to one or more of the following dispositions:

- (a) To be placed on probation as authorized by part II ~~[of this chapter]~~;
- (b) To pay a fine as authorized by part III and section 706-624 ~~[of this chapter]~~;
- (c) To be imprisoned for a term as authorized by part IV ~~[of this chapter]~~;
or
- ~~[(d) To make restitution in an amount the defendant can afford to pay; provided that the court may order any restitution to be paid to victims pursuant to section 706-646 or to the crime victim compensation special fund in the event that the victim has been given an award for compensation under chapter 351 and, if the court orders, in addition to restitution, payment of fine in accordance with paragraph (b), the payment of restitution and a compensation fee shall have priority over the payment of the fine; payment of restitution shall have priority over payment of a compensation fee; or~~
- ~~(e)] (d) To perform services for the community under the supervision of a governmental agency or benevolent or charitable organization or other community service group or appropriate supervisor; provided that the convicted person who performs such services shall not be deemed to be an employee of the governmental agency or assigned work site for any purpose. All persons sentenced to perform community service shall be screened and assessed for appropriate placement by a governmental agency coordinating public service work placement as a condition of sentence.~~

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

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

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

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

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

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

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

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

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

“(1) Notwithstanding section 706-620(3), a person convicted for the first time for any offense under section 329-43.5 involving the possession or use of drug paraphernalia or any felony offense under part IV of chapter 712 involving the 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 712-1240.6, or involving possession or use of drug paraphernalia under section 329-43.5,] but not including any offense under part IV of chapter 712 involving the distribution or manufacture of any such drugs or substances and not including any methamphetamine trafficking offenses under sections 712-A and 712-B, 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.”

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

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

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

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

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

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

- (a) That the defendant not commit another federal or state crime or engage in criminal conduct in any foreign jurisdiction or under military jurisdiction that would constitute a crime under Hawaii law during the term of probation;
- (b) That the defendant report to a probation officer as directed by the court or the probation officer;
- (c) That the defendant remain within the jurisdiction of the court, unless granted permission to leave by the court or a probation officer;
- (d) That the defendant notify a probation officer prior to any change in address or employment;
- (e) That the defendant notify a probation officer promptly if arrested or questioned by a law enforcement officer; ~~and~~
- (f) That the defendant permit a probation officer to visit the defendant at the defendant’s home or elsewhere as specified by the court[-]; and
- (g) That the defendant make restitution for losses suffered by the victim or victims if the court has ordered restitution pursuant to section 706-646.

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

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

- (b) Perform a specified number of hours of services to the community as described in section ~~[706-605(1)(e);]~~ 706-605(1)(d);
 - (c) Support the defendant's dependents and meet other family responsibilities;
 - (d) Pay a fine imposed pursuant to section 706-605(1)(b);
 - ~~[(e) Make restitution as specified in section 706-605(1)(d);~~
 - ~~(f)~~ (e) Work conscientiously at suitable employment or pursue conscientiously a course of study or vocational training that will equip the defendant for suitable employment;
 - ~~[(g)]~~ (f) Refrain from engaging in a specified occupation, business, or profession bearing a reasonably direct relationship to the conduct constituting the crime or engage in the specified occupation, business, or profession only to a stated degree or under stated circumstances;
 - ~~[(h)]~~ (g) Refrain from frequenting specified kinds of places or from associating unnecessarily with specified persons, including but not limited to the victim of the crime, any witnesses, regardless of whether they actually testified in the prosecution, law enforcement officers, co-defendants, or other individuals with whom contact may adversely affect the rehabilitation or reformation of the person convicted;
 - ~~[(i)]~~ (h) Refrain from use of alcohol or any use of narcotic drugs or controlled substances without a prescription;
 - ~~[(j)]~~ (i) Refrain from possessing a firearm, ammunition, destructive device, or other dangerous weapon;
 - ~~[(k)]~~ (j) Undergo available medical~~[-, psychiatric, or psychological]~~ or mental health treatment, including treatment for ~~[drug or alcohol]~~ substance abuse dependency, and remain in a specified ~~[institution]~~ facility if required for that purpose;
 - ~~[(l)]~~ (k) Reside in a specified place or area or refrain from residing in a specified place or area;
 - ~~[(m)]~~ (l) Submit to periodic urinalysis or other similar testing procedure;
 - ~~[(n)]~~ Satisfy other reasonable conditions as the court may impose;
 - ~~(o)~~ (m) Refrain from entering specified geographical areas without the court's permission; ~~or~~
 - ~~(p)~~ (n) Refrain from leaving the person's dwelling place except to go to and from the person's place of employment, the office of the person's physician or dentist, the probation office, or ~~[as may be granted]~~ any other location as may be approved by the person's probation officer pursuant to court order. As used in this paragraph, "dwelling place" includes the person's yard or, in the case of condominiums, the common elements~~[-];~~
 - (o) Comply with a specified curfew;
 - (p) Submit to monitoring by an electronic monitoring device; or
 - (q) Satisfy other reasonable conditions as the court may impose.
- (3) Written statement of conditions. The court shall order the defendant at the time of sentencing to sign a written acknowledgement of receipt of conditions of probation. The defendant shall be given a written copy of any requirements imposed pursuant to this section, stated with sufficient specificity to enable the defendant to [guide the defendant's self] comply with the conditions accordingly."

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

"(1) The defendant shall pay a fine or any installment thereof to the cashier or clerk of the [sentencing] district or circuit court. In the event of default in

payment, the clerk shall notify the prosecuting attorney and, if the defendant is on probation, the probation officer.”

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

“(2) The court [may] shall order the defendant to make restitution for reasonable and verified losses suffered by the victim or victims as a result of the defendant’s offense[.] when requested by the victim. The court [may] shall order restitution to be paid to the crime victim compensation commission in the event that the victim has been given an award for compensation under chapter 351. If the court orders payment of a fine in addition to restitution or a compensation fee, or both, the payment of restitution and compensation fee shall have priority over the payment of the fine, and payment of restitution shall have priority over payment of a compensation fee.

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

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

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

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

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

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

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

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

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

- (1) ~~The defendant is a persistent offender [whose imprisonment for an extended term is necessary for protection of the public. The court shall not make this finding unless]~~ in that the defendant has previously been convicted of two felonies committed at different times when the defendant was eighteen years of age or older[.];
- (2) The defendant is a professional criminal ~~[whose imprisonment for an extended term is necessary for protection of the public. The court shall not make this finding unless:]~~ in that:
 - (a) The circumstances of the crime show that the defendant has knowingly engaged in criminal activity as a major source of livelihood; or
 - (b) The defendant has substantial income or resources not explained to be derived from a source other than criminal activity[.];
- (3) The defendant is a dangerous person ~~[whose imprisonment for an extended term is necessary for protection of the public. The court shall not make this finding unless]~~ in that the defendant has been subjected to a psychiatric or psychological evaluation that documents a significant history of dangerousness to others resulting in criminally violent conduct, and this history makes the defendant a serious danger to others. Nothing in this section precludes the introduction of victim-related data in order to establish dangerousness in accord with the Hawaii rules of evidence[.];
- (4) The defendant is a multiple offender ~~[whose criminal actions were so extensive that a sentence of imprisonment for an extended term is necessary for protection of the public. The court shall not make this finding unless:]~~ in that:
 - (a) The defendant is being sentenced for two or more felonies or is already under sentence of imprisonment for felony; or
 - (b) The maximum terms of imprisonment authorized for each of the defendant’s crimes, if made to run consecutively, would equal or exceed in length the maximum of the extended term imposed or would equal or exceed forty years if the extended term imposed is for a class A felony[.];
- (5) The defendant is an offender against the elderly, handicapped, or a minor under the age of eight, ~~[whose imprisonment for an extended term is necessary for the protection of the public. The court shall not make this finding unless:]~~ in that:
 - (a) The defendant attempts or commits any of the following crimes: murder, manslaughter, a sexual offense that constitutes a felony under chapter 707, robbery, felonious assault, burglary, or kidnapping; and
 - (b) The defendant, in the course of committing or attempting to commit the crime, inflicts serious or substantial bodily injury upon a person who is:
 - (i) Sixty years of age or older;
 - (ii) Blind, a paraplegic, or a quadriplegic; or
 - (iii) Eight years of age or younger; and

- (c) Such disability is known or reasonably should be known to the defendant~~[-];~~ or
- (6) The defendant is a hate crime offender ~~[whose imprisonment for an extended term is necessary for the protection of the public. The court shall not make this finding unless:]~~ in that:
 - (a) The defendant is convicted of a crime under chapter 707, 708, or 711; and
 - (b) The defendant intentionally selected a victim~~[-]~~ or, in the case of a property crime, the property that was the object of a crime, because of hostility toward the actual or perceived race, religion, disability, ethnicity, national origin, gender identity or expression, or sexual orientation of any person. For purposes of this subsection, “gender identity or expression” includes a person’s actual or perceived gender, as well as a person’s gender identity, gender-related self-image, gender-related appearance, or gender-related expression~~[-]~~; regardless of whether that gender identity, gender-related self-image, gender-related appearance, or gender-related expression is different from that traditionally associated with the person’s sex at birth.”

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

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

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

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

This section shall not apply to the offenses of murder or attempted murder.”

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

““Mentally incapacitated” means a person rendered temporarily incapable of appraising or controlling the person’s conduct ~~[owing to]~~ as a result of the influence of a substance administered to the person without the person’s consent.

“Sexual penetration” means:

- (1) Vaginal intercourse, anal intercourse, fellatio, deviate sexual intercourse, or any intrusion of any part of a person's body or of any object into the genital or anal opening of another person's body; it occurs upon any penetration, however slight, but emission is not required^[;]. As used in this definition, "genital opening" includes the anterior surface of the vulva or labia majora; or
- (2) Cunnilingus or anilingus, whether or not actual penetration has occurred.

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

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

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

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

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

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

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

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

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

- (a) The person intentionally or knowingly causes substantial bodily injury to another;
- (b) The person recklessly causes serious or substantial bodily injury to another person;
- (c) The person intentionally or knowingly causes bodily injury to a correctional worker, as defined in section 710-1031(2), who is engaged in the performance of duty or who is within a correctional facility;
- (d) The person intentionally or knowingly causes bodily injury to another person with a dangerous instrument; or
- (e) The person intentionally or knowingly causes bodily injury to an educational worker who is engaged in the performance of duty or who is within an educational facility. For the purposes of this ~~[section,]~~ paragraph, "educational worker" means: any administrator, specialist, counselor, teacher, or employee of the department of education~~[, or]~~; a person who is a volunteer in a school program, activity, or function that is established, sanctioned, or approved by the department of education;

or a person hired by the department of education on a contractual basis and engaged in carrying out an educational function.”

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

“**§707-714 Reckless endangering in the second degree.** (1) A person commits the offense of reckless endangering in the second degree if the person ~~engages~~:

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

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

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

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

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

“(1) A person commits the offense of terroristic threatening in the first degree if the person commits terroristic threatening:

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

(b) By threats made in a common scheme against different persons; [or]

(c) Against a public servant[-, including] arising out of the performance of the public servant’s official duties. For the purposes of this paragraph, “public servant” includes but is not limited to an educational worker[-, who for the purposes of this section shall mean an administrator, specialist, counselor, teacher, or other employee of the department of education, or a volunteer as defined by section 90-1, in a school program, activity, or function that is established, sanctioned, or approved by the department of education, or a person hired by the department of education on a contractual basis and engaged in carrying out an educational function; or]. “Educational worker” has the same meaning as defined in section 707-711; or

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

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

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

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

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

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

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

- (ii) The person is not legally married to the minor[-];
- (d) The person knowingly subjects to sexual penetration another person who is mentally defective; or
- (e) The person knowingly subjects to sexual penetration another person who is mentally incapacitated or physically helpless as a result of the influence of a substance that the actor knowingly caused to be administered to the other person without the other person's consent.

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

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

- “(1) A person commits the offense of sexual assault in the second degree if:
- (a) The person knowingly subjects another person to an act of sexual penetration by compulsion;
 - (b) The person knowingly subjects to sexual penetration another person who is [~~mentally defective,~~] mentally incapacitated[;] or physically helpless; or
 - (c) The person, while employed:
 - (i) In a state correctional facility;
 - (ii) By a private company providing services at a correctional facility;
 - (iii) By a private company providing community-based residential services to persons committed to the director of public safety and having received notice of this statute;
 - (iv) By a private correctional facility operating in the State of Hawaii; or
 - (v) As a law enforcement officer as defined in section 710-1000(13), knowingly subjects to sexual penetration an imprisoned person, a person confined to a detention facility, a person committed to the director of public safety, a person residing in a private correctional facility operating in the State of Hawaii, or a person in custody; provided that paragraph (b) and this paragraph shall not be construed to prohibit practitioners licensed under chapter 453, 455, or 460, from performing any act within their respective practices; and further provided that this paragraph shall not be construed to prohibit a law enforcement officer from performing a lawful search pursuant to a warrant or exception to the warrant clause.’’

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

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

- (1) Except as otherwise specified in this section, value means the market value of the property or services at the time and place of the offense, or the replacement cost [[if[]] the market value of the property or services cannot be determined.
- (2) Whether or not they have been issued or delivered, certain written instruments, not including those having a readily ascertained market value, shall be evaluated as follows:

- (a) The value of an instrument constituting an evidence of debt, such as a check, traveler's check, draft, or promissory note, shall be deemed the amount due or collectible thereon or thereby, that figure ordinarily being the face amount of the indebtedness less any portion thereof [which] that has been satisfied;
 - (b) The value of any other instrument that creates, releases, discharges, or otherwise affects any valuable legal right, privilege, or obligation shall be deemed the greatest amount of economic loss [which] that the owner of the instrument might reasonably suffer by virtue of the loss of the instrument.
- (3) When property [has] or services have value but that value cannot be ascertained pursuant to the standards set forth above, the value shall be deemed to be an amount not exceeding \$100.
 - (4) When acting intentionally or knowingly with respect to the value of property or services is required to establish an element of an offense, the value of property or services shall be prima facie evidence that the defendant believed or knew the property or services to be of that value. When acting recklessly with respect to the value of property or services is sufficient to establish an element of an offense, the value of the property or services shall be prima facie evidence that the defendant acted in reckless disregard of the value.
 - (5) When acting intentionally or knowingly with respect to the value of property or services is required to establish an element of an offense, it is a defense, which reduces the class or grade of the offense to a class or grade of offense consistent with the defendant's state of mind, that the defendant believed the valuation of the property or services to be less. When acting recklessly with respect to the value of property or services is required to establish an element of an offense, it is a defense that the defendant did not recklessly disregard a risk that the property was of the specified value.
 - (6) Amounts involved in thefts committed pursuant to one scheme or course of conduct, whether the property taken be of one person or several persons, may be aggregated in determining the class or grade of the offense. Amounts involved in offenses of criminal property damage committed pursuant to one scheme or course of conduct, whether the property damaged be of one person or several persons, may be aggregated in determining the class or grade of the offense."

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

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

- (a) The person recklessly damages the property of another, without the other's consent, by the use of widely dangerous means; or
- (b) The person intentionally or knowingly damages the property of another, without the other's consent, in an amount exceeding \$500."

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

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

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

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

- (1) Obtains or exerts unauthorized control over property. A person obtains^[,] or exerts unauthorized control over^[,] the property of another with intent to deprive the other of the property.
- (2) Property obtained or control exerted through deception. A person obtains, or exerts control over, the property of another by deception with intent to deprive the other of the property.
- (3) Appropriation of property. A person obtains, or exerts control over, the property of another that the person knows to have been lost or mislaid or to have been delivered under a mistake as to the nature or amount of the property, the identity of the recipient, or other facts, and, with the intent to deprive the owner of the property, the person fails to take reasonable measures to discover and notify the owner.
- (4) Obtaining services by deception. A person intentionally obtains services, known by the person to be available only for compensation, by deception, false token, or other means to avoid payment for the services. When compensation for services is ordinarily paid immediately upon the rendering of them, absconding without payment or offer to pay is prima facie evidence that the services were obtained by deception.
- (5) Diversion of services. Having control over the disposition of services of another to which a person is not entitled, the person intentionally diverts those services to the person’s own benefit or to the benefit of a person not entitled thereto.
- (6) Failure to make required disposition of funds.
 - (a) A person intentionally obtains property from anyone upon an agreement, or subject to a known legal obligation, to make specified payment or other disposition, whether from the property or its proceeds or from the person’s own property reserved in equivalent amount, and deals with the property as the person’s own and fails to make the required payment or disposition. It does not matter that it is impossible to identify particular property as belonging to the victim at the time of the defendant’s failure to make the required payment or disposition. A person’s status as an officer or employee of the government or a financial institution is prima facie evidence that the person knows the person’s legal obligations with respect to making payments and other dispositions. If the officer or employee fails to pay or account upon lawful demand, or if an audit reveals a falsification of accounts, it shall be prima facie evidence that the officer or employee has intentionally dealt with the property as the officer’s or employee’s own.
 - (b) A person obtains personal services from an employee upon agreement or subject to a known legal obligation to make a payment or other disposition of funds to a third person on account of the employment, and the person intentionally fails to make the payment or disposition at the proper time.
- (7) Receiving stolen property. A person intentionally receives, retains, or disposes of the property of another, knowing that it has been stolen, with intent to deprive the owner of the property. It is prima facie

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

(8) Shoplifting.

- (a) A person conceals or takes possession of the goods or merchandise of any store or retail establishment, with intent to defraud.
- (b) A person alters the price tag or other price marking on goods or merchandise of any store or retail establishment, with intent to defraud.
- (c) A person transfers the goods or merchandise of any store or retail establishment from one container to another, with intent to defraud.

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

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

“(1) A person commits the offense of theft in the third degree if the person commits theft:

- (a) Of property or services the value of which exceeds \$100; or
- (b) Of gasoline, diesel fuel, or other related petroleum products used as propellants of any value not exceeding [~~\$200.~~] \$300.”

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

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

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

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

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

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

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

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

- (a) The person attempts to kill another[;] or intentionally or knowingly inflicts or attempts to inflict serious bodily injury upon another; or
- (b) The person is armed with a dangerous instrument and:
 - (i) The person uses force against the person of anyone present with intent to overcome that person’s physical resistance or physical power of resistance; or
 - (ii) The person threatens the imminent use of force against the person of anyone who is present with intent to compel acquiescence to the taking of or escaping with the property.”

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

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

- (a) The person uses force against the person of anyone present with the intent to overcome that person’s physical resistance or physical power of resistance;
- (b) The person threatens the imminent use of force against the person of anyone who is present with intent to compel acquiescence to the taking of or escaping with the property; or
- (c) The person recklessly inflicts serious bodily injury upon another.”

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

“**§708-842 Robbery; “in the course of committing a theft.”** An act shall be deemed “in the course of committing a theft or non-consensual taking of a motor vehicle” if it occurs in an attempt to commit theft[;] or non-consensual taking of a motor vehicle, in the commission of theft[;] or non-consensual taking of a motor vehicle, or in the flight after the attempt or commission.”

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

“(2) Fraudulent use of a credit card is a class C felony if the value of all money, goods, services, and other things of value obtained or attempted to be obtained exceeds \$300 in any six-month period. For purposes of this section, each separate use of a credit card that exceeds \$300 constitutes a separate offense.”

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

“(3) Endangering the welfare of a minor in the second degree is a misdemeanor.”

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

“§709-906 Abuse of family or household members; penalty. (1) It shall be unlawful for any person, singly or in concert, to physically abuse a family or household member or to refuse compliance with the lawful order of a police officer under subsection (4). The police, in investigating any complaint of abuse of a family or household member, upon request, may transport the abused person to a hospital or safe shelter.

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

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

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

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

- (a) The police officer may make reasonable inquiry of the family or household member upon whom the officer believes physical abuse or harm has been inflicted and other witnesses as there may be;
- (b) Where the police officer has reasonable grounds to believe that there is probable danger of further physical abuse or harm being inflicted by one person upon a family or household member, the police officer lawfully may order the person to leave the premises for a period of separation of twenty-four hours, during which time the person shall not initiate any contact, either by telephone or in person, with the family or household member; provided that the person is allowed to enter the premises with police escort to collect any necessary personal effects;
- (c) Where the police officer makes the finding referred to in paragraph (b) and the incident occurs after 12:00 p.m. on any Friday, or on any Saturday, Sunday, or legal holiday, the order to leave the premises and to initiate no further contact shall commence immediately and be in full force, but the twenty-four hour period shall be enlarged and extended until 4:30 p.m. on the first day following the weekend or legal holiday;
- (d) All persons who are ordered to leave as stated above shall be given a written warning citation stating the date, time, and location of the warning and stating the penalties for violating the warning. A copy of the warning citation shall be retained by the police officer and attached to a written report which shall be submitted in all cases. A third copy of the warning citation shall be given to the abused person;
- (e) If the person so ordered refuses to comply with the order to leave the premises or returns to the premises before the expiration of the period of separation, or if the person so ordered initiates any contact with the abused person, the person shall be placed under arrest for the purpose of preventing further physical abuse or harm to the family or household member; and
- (f) The police officer may seize all firearms and ammunition that the police officer has reasonable grounds to believe were used or threatened to be used in the commission of an offense under this section.

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

- (a) For the first offense the person shall serve a minimum jail sentence of forty-eight hours; and
- (b) For a second offense that occurs within one year of the first conviction, the person shall be termed a "repeat offender" and serve a minimum jail sentence of thirty days.

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

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

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

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

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

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

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

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

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

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

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

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

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

- (a) The person confers, or offers or agrees to confer, directly or indirectly, any pecuniary benefit upon a public servant with the intent to influence the public servant’s vote, opinion, judgment, exercise of discretion, or other action in the public servant’s official capacity; or
- (b) While a public servant, the person solicits, accepts, or agrees to accept, directly or indirectly, any pecuniary benefit with the intent that the person’s vote, opinion, judgment, exercise of discretion, or other action as a public servant will thereby be influenced.

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

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

(4) Bribery is a class [C] B felony. A person convicted of violating this section, notwithstanding any law to the contrary, shall not be eligible for a deferred acceptance of guilty plea or nolo contendere plea under chapter 853.’’

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

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

- (a) Trespasses on property for the purpose of subjecting anyone to eavesdropping or other surveillance in a private place;
- (b) Peers or peeps into a window or other opening of a dwelling or other structure adapted for sojourn or overnight accommodations for the purpose of spying on the occupant thereof or invading the privacy of another person with a lewd or unlawful purpose, under circumstances in which a reasonable person in the dwelling or other structure would not expect to be observed;
- (c) Trespasses on property for the sexual gratification of the actor;
- [(b)] (d) Installs or uses, or both, in any private place, without consent of the person or persons entitled to privacy therein, any means or device for observing, recording, amplifying, or broadcasting sounds or events in that place [other than], including another person in a stage of undress or sexual activity;
- [(e)] (e) Installs or uses outside a private place any device for hearing, recording, amplifying, or broadcasting sounds originating in that place which would not ordinarily be audible or comprehensible outside, without the consent of the person or persons entitled to privacy therein;
- [(d)] (f) Covertly records or broadcasts an image of another person’s intimate area underneath clothing, by use of any device, and that image is taken while that person is in a public place and without that person’s consent;
- [(e)] (g) Intercepts, without the consent of the sender or receiver, a message or photographic image by telephone, telegraph, letter, electronic transmission, or other means of communicating privately; but this paragraph does not apply to:

- (i) Overhearing of messages through a regularly installed instrument on a telephone party line or an extension; or
- (ii) Interception by the telephone company, electronic mail account provider, or telephone or electronic mail subscriber incident to enforcement of regulations limiting use of the facilities or incident to other operation and use;
- [(f)] (h) Divulges, without the consent of the sender or the receiver, the existence or contents of any message or photographic image by telephone, telegraph, letter, electronic transmission, or other means of communicating privately, if the accused knows that the message or photographic image was unlawfully intercepted or if the accused learned of the message or photographic image in the course of employment with an agency engaged in transmitting it; or
- [(g)] (i) Knowingly possesses materials created under circumstances prohibited in section 711-1110.9.”

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

“(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[;] ~~except methamphetamine;~~ or
- (b) Distributes, except for methamphetamine [~~as provided in section 712-1240.6~~]:
 - (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 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 712-1240.6~~]; or
- (d) Manufactures a dangerous drug in any amount, except for methamphetamine [~~as provided in section 712-1240.6~~]; provided that this subsection shall not apply to any person registered under section 329-32.”

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

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

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

SECTION 53. Statutory material to be repealed is bracketed and stricken. New statutory material is underscored.¹

SECTION 54. This Act shall take effect upon its approval; provided that on June 30, 2007, sections 23 and 24 of this Act shall be repealed and sections 706-661 and 706-662, Hawaii Revised Statutes, shall be reenacted in the form in which they read on the day before the effective date of this Act.

(Approved June 22, 2006.)

Note

1. Edited pursuant to HRS §23G-16.5.