

ACT 187

S.B. NO. 1025

A Bill for an Act Relating to the Penal Code.

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

PART I

SECTION 1. 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;
 - (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 with a dangerous instrument;
 - (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 paragraph, “educational worker” means: any administrator, specialist, counselor, teacher, or employee of the department of education or an employee of a charter school; a person who is a volunteer, as defined in 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;
 - (f) The person intentionally or knowingly causes bodily injury to any emergency medical services provider who is engaged in the performance of duty. For the purposes of this paragraph, “emergency medical services provider” means emergency medical services personnel, as defined in section 321-222, and physicians, physician’s assistants, nurses, nurse practitioners, certified registered nurse anesthetists, respiratory therapists, laboratory technicians, radiology technicians,

and social workers, providing services in the emergency room of a hospital; [ø]

- (g) The person intentionally or knowingly causes bodily injury to a person employed at a state-operated or -contracted mental health facility. For the purposes of this paragraph, "a person employed at a state-operated or -contracted mental health facility" includes health care professionals as defined in section 451D-2, administrators, orderlies, security personnel, volunteers, and any other person who is engaged in the performance of a duty at a state-operated or -contracted mental health facility[-]; or
- (h) The person intentionally or knowingly causes bodily injury to any firefighter or water safety officer who is engaged in the performance of duty. For the purposes of this paragraph, "firefighter" has the same meaning as in section 710-1012 and "water safety officer" means any public servant employed by the United States, the State, or any county as a lifeguard or person authorized to conduct water rescue or ocean safety functions."

PART II

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

"§708- Unauthorized entry in a dwelling in the first degree. (1) A person commits the offense of unauthorized entry in a dwelling in the first degree if the person intentionally or knowingly enters unlawfully into a dwelling and another person was, at the time of the entry, lawfully present in the dwelling who:

- (a) Was sixty-two years of age or older;
 - (b) Was an incapacitated person; or
 - (c) Had a developmental disability.
- (2) For the purposes of this section:

"Developmental disability" shall have the same meaning as in section 333E-2.

"Incapacitated person" shall have the same meaning as in section 560:5-102.

(3) Unauthorized entry in a dwelling in the first degree is a class B felony.

(4) It shall be 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 as an invited guest; and
- (c) The defendant had no intent to commit any unlawful act other than the entry."

SECTION 3. Section 708-812.6, Hawaii Revised Statutes, is amended to read as follows:

[[[§708-812.6]]] Unauthorized entry in a dwelling[-] in the second degree. (1) A person commits the offense of unauthorized entry in a dwelling in the second degree if the person intentionally or knowingly enters unlawfully into a dwelling [~~with reckless disregard of the risk that another person was law-~~

~~fully present in the dwelling,]~~ and another person was lawfully present in the dwelling.

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

(3) It ~~[is]~~ shall be 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.”

PART III

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

SECTION 5. If any provision of this Act, or the application thereof to any person or circumstance is held invalid, the invalidity does not affect other provisions or applications of the Act, which can be given effect without the invalid provision or application, and to this end the provisions of this Act are severable.

SECTION 6. Statutory material to be repealed is bracketed and stricken. New statutory material is underscored.¹

SECTION 7. This Act shall take effect upon its approval.

(Approved July 5, 2011.)

Note

1. Edited pursuant to HRS §23G-16.5.