



GOV. MSG. NO. 1340

EXECUTIVE CHAMBERS
HONOLULU

DAVID Y. IGE
GOVERNOR

July 11, 2016

The Honorable Ronald D. Kouchi,
President
and Members of the Senate
Twenty-Eighth State Legislature
State Capitol, Room 409
Honolulu, Hawai'i 96813

The Honorable Joseph M. Souki,
Speaker and Members of the
House of Representatives
Twenty-Eighth State Legislature
State Capitol, Room 431
Honolulu, Hawai'i 96813

Dear President Kouchi, Speaker Souki, and Members of the Legislature:

Re: HB2561 HD1 SD1 CD1

HB2561 HD1 SD1 CD1, entitled "A BILL FOR AN ACT RELATING TO THE ADMINISTRATION OF JUSTICE" will become law without my signature, pursuant to Section 16 of Article III of the State Constitution.

The purpose of this bill is to enact the recommendations of the Penal Code Review Committee convened pursuant to HCR155 SD1, Regular Session 2015.

This bill raises some concern because of the amendments proposed in part V of the bill, sections 37 to 39, which increase the threshold dollar amounts for the offenses of Theft in the Second Degree, Theft in the Third Degree, and Theft in the Fourth Degree and part VIII of the bill, sections 52 to 56, eliminate mandatory sentencing provisions for the methamphetamine trafficking offenses. While the majority of the Penal Code Review Committee did support these proposals, there was nonetheless strong opposition to these from some of the members of the Committee.

Additionally concerning is section 70 of the bill, which attempts to mandate the retroactive application of the new methamphetamine distribution and possession offenses and sentences to offenders who committed the offenses before the effective date of the Act. These retroactive provision were not proposed by the Penal Code

Law Without Approval
HB2561 HD1 SD1 CD1
July 11, 2016
Page Two

Review Committee, but rather were inserted into the bill after one of the legislative committee hearings.

For the foregoing reasons, HB2561 HD1 SD1 CD1 will become law as ACT 231 (16), Session Laws of Hawaii 2016, effective July 11, 2016, without my signature.

Sincerely,

A handwritten signature in black ink, reading "David Y. Ige". The signature is fluid and cursive, with the first name "David" being the most prominent.

DAVID Y. IGE
Governor, State of Hawaii

A BILL FOR AN ACT

RELATING TO THE ADMINISTRATION OF JUSTICE.

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

PART I

SECTION 1. The legislature finds that house concurrent resolution no. 155, S.D. 1, (2015), requested the judicial council to appoint a committee to review and recommend revisions to the Hawai'i penal code to help ensure that grades of offenses and punishment are fair and proportionate to the crime committed, with particular attention paid to provisions that base culpability on dollar amounts. The committee was also asked to consider revisions that are cost-effective in deterring crime, reducing recidivism, and providing restitution to victims in a manner that provides equal justice and punishment, regardless of socioeconomic class or ethnicity.

Accordingly, the judicial council convened a penal code review committee comprising twenty-nine members, including judges from appellate, circuit, and district courts; the chair of the senate committee on judiciary and labor; the chair of the house judiciary committee; the attorney general; the director of public safety; the prosecuting attorneys for the counties of



1 Hawaii, Kauai, and Maui; a representative of the prosecuting
2 attorney for the city and county of Honolulu; a representative
3 of the office of the public defender; representatives from the
4 Honolulu police department; a representative of the office of
5 Hawaiian affairs; a member of the judicial council;
6 representatives of the criminal defense bar; crime victim
7 advocates; and community advocates. Five subcommittees were
8 formed, and each subcommittee convened numerous times to
9 consider and prepare proposed revisions to designated parts of
10 the penal code and to related statutes outside the penal code,
11 for submission to the entire committee. The penal code review
12 committee met in plenary session seven times between June 19 and
13 December 18, 2015, and recommended the legislation proposed by
14 this Act.

15 The purpose of this Act is to amend various chapters of the
16 Hawaii penal code, and related statutes outside the penal code,
17 pursuant to the recommendations of the penal code review
18 committee.



PART II

SECTION 2. The purpose of this part is to amend chapter 704, Hawaii Revised Statutes, regarding penal responsibility and fitness to proceed, to:

- (1) Limit the period of conditional release of defendants acquitted by reason of physical or mental disease, disorder, or defect in non-felony cases to no more than one year because that is the longest term of incarceration that may be imposed upon a conviction in those cases;
- (2) Require that examination reports regarding a defendant's fitness to proceed to trial be provided to the director of health;
- (3) Clarify that a defendant's right to bail and proceedings under chapter 804, Hawaii Revised Statutes, are not suspended when a court suspends pretrial proceedings due to questions about the defendant's physical or mental capacity;
- (4) Provide courts with discretion to decide whether records of a forensic examination shall be provided to



1 the prosecution and defense in hard copy or digital
2 format;

3 (5) Permit the defendant to be examined while in custody
4 or on release;

5 (6) Provide courts with discretion to decide whether a
6 forensic examination is necessary when a defendant
7 seeks only to modify conditions of release; and to
8 order temporary hospitalization without revocation of
9 a defendant's conditional release; and

10 (7) Add references to appropriate statutory authority for
11 involuntary hospitalization and assisted community
12 treatment criteria.

13 This part also seeks to improve the timeliness and
14 efficiency of forensic examinations. Because the department of
15 health presently lacks the personnel to participate in all
16 forensic examination panels, this part temporarily amends
17 section 704-404(2), Hawaii Revised Statutes, to repeal the
18 requirement that one member of the panels be appointed from
19 within the department. Mandatory participation in forensic
20 examinations will be restored in two years, which will give the
21 department time to address its personnel shortages.



SECTION 3. Chapter 704, Hawaii Revised Statutes, is amended by adding two new sections to be appropriately designated and to read as follows:

"§704- Conditional release; duration limited in nonfelony cases. For any defendant granted conditional release in a nonfelony case pursuant to section 704-411(1) (b), 704-412, 704-414, or 704-415, the period of conditional release shall not exceed one year.

§704- Examination reports; provided to director of health. Copies of all examination reports made pursuant to sections 704-404, 704-406, 704-411, and 704-414 shall be provided to the director of health."

SECTION 4. Section 704-404, Hawaii Revised Statutes, is amended as follows:

1. By amending subsections (1) and (2) 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



1 court may immediately suspend all further proceedings in the
2 prosecution~~[-]~~; provided that for any defendant not subject to
3 an order of commitment to a hospital for the purpose of the
4 examination, neither the right to bail nor proceedings pursuant
5 to chapter 804 shall be suspended. If a trial jury has been
6 empanelled, it shall be discharged or retained at the discretion
7 of the court. The discharge of the trial jury shall not be a
8 bar to further prosecution.

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



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

14 2. By amending subsection (8) to read:

15 "(8) The court shall obtain all existing medical, mental
16 health, social, police, and juvenile records, including those
17 expunged, and other pertinent records in the custody of public
18 agencies, notwithstanding any other ~~[statutes,]~~ statute, and
19 make ~~[such]~~ the records available for inspection by the
20 examiners~~[,]~~ in hard copy or digital format. The court may
21 order that the records so obtained be made available to the



1 prosecuting attorney and counsel for the defendant in either
2 format, subject to conditions the court determines appropriate;
3 provided that juvenile records shall not be made available
4 unless constitutionally required. If, pursuant to this section,
5 the court orders the defendant committed to a hospital or other
6 suitable facility under the control of the director of health,
7 then the county police departments shall provide to the director
8 of health and the defendant copies of all police reports from
9 cases filed against the defendant ~~[which]~~ that have been
10 adjudicated by the acceptance of a plea of guilty or no contest,
11 a finding of guilt, acquittal, acquittal pursuant to section
12 704-400, or by the entry of plea of guilty or no contest made
13 pursuant to chapter 853~~[, so long as]~~; provided that the
14 disclosure to the director of health and the defendant does not
15 frustrate a legitimate function of the county police
16 departments, with the exception of expunged records, records of
17 or pertaining to any adjudication or disposition rendered in the
18 case of a juvenile, or records containing data from the United
19 States National Crime Information Center. The county police
20 departments shall segregate or sanitize from the police reports
21 information that would result in the likelihood or actual



1 identification of individuals who furnished information in
2 connection with its investigation, or who were of investigatory
3 interest. Records shall not be re-disclosed except to the
4 extent permitted by law."

5 SECTION 5. Section 704-404, Hawaii Revised Statutes, is
6 amended by amending subsection (2) to read as follows:

7 "(2) Upon suspension of further proceedings in the
8 prosecution, the court shall appoint three qualified examiners
9 in felony cases, and one qualified examiner in nonfelony cases,
10 to examine and report upon the physical and mental condition of
11 the defendant. In felony cases, the court shall appoint at
12 least one psychiatrist and at least one licensed psychologist.
13 The third member may be a psychiatrist, licensed psychologist,
14 or qualified physician. One of the three shall be a
15 psychiatrist or licensed psychologist designated by the director
16 of health[-] from within the department of health. In nonfelony
17 cases, the court may appoint either a psychiatrist or a licensed
18 psychologist. All examiners shall be appointed from a list of
19 certified examiners as determined by the department of health.
20 The court, in appropriate circumstances, may appoint an
21 additional examiner or examiners. The examination may be



1 conducted while the defendant is in custody or on release or, in
2 the court's discretion, when necessary the court may order the
3 defendant to be committed to a hospital or other suitable
4 facility for the purpose of the examination for a period not
5 exceeding thirty days, or a longer period as the court
6 determines to be necessary for the purpose. The court may
7 direct that one or more qualified physicians or psychologists
8 retained by the defendant be permitted to witness the
9 examination. As used in this section, the term "licensed
10 psychologist" includes psychologists exempted from licensure by
11 section 465-3(a)(3)."

12 SECTION 6. Section 704-406, Hawaii Revised Statutes, is
13 amended to read as follows:

14 "§704-406 Effect of finding of unfitness to proceed. (1)
15 If the court determines that the defendant lacks fitness to
16 proceed, the proceeding against the defendant shall be
17 suspended, except as provided in section 704-407, and the court
18 shall commit the defendant to the custody of the director of
19 health to be placed in an appropriate institution for detention,
20 care, and treatment; provided that the commitment shall be
21 limited in certain cases as follows:



1 (a) When the defendant is charged with a petty misdemeanor
2 not involving violence or attempted violence, the
3 commitment shall be limited to no longer than sixty
4 days from the date the court determines the defendant
5 lacks fitness to proceed; and
6 (b) When the defendant is charged with a misdemeanor not
7 involving violence or attempted violence, the
8 commitment shall be limited to no longer than one
9 hundred twenty days from the date the court determines
10 the defendant lacks fitness to proceed.

11 If the court is satisfied that the defendant may be released on
12 conditions without danger to the defendant or to the person or
13 property of others, the court shall order the defendant's
14 release, which shall continue at the discretion of the court, on
15 conditions the court determines necessary; provided that the
16 release on conditions of a defendant charged with a petty
17 misdemeanor not involving violence or attempted violence shall
18 continue for no longer than sixty days, and the release on
19 conditions of a defendant charged with a misdemeanor not
20 involving violence or attempted violence shall continue for no
21 longer than one hundred twenty days. A copy of ~~[the report]~~ all



1 reports filed pursuant to section 704-404 shall be attached to
2 the order of commitment or order of release on conditions[-]
3 that is provided to the department of health. When the
4 defendant is committed to the custody of the director of health
5 for detention, care, and treatment, the county police
6 departments shall provide to the director of health and the
7 defendant copies of all police reports from cases filed against
8 the defendant that have been adjudicated by the acceptance of a
9 plea of guilty or nolo contendere, a finding of guilt,
10 acquittal, acquittal pursuant to section 704-400, or by the
11 entry of a plea of guilty or nolo contendere made pursuant to
12 chapter 853 [~~se long as~~]; provided that the disclosure to the
13 director of health and the defendant does not frustrate a
14 legitimate function of the county police departments; provided
15 further that expunged records, records of or pertaining to any
16 adjudication or disposition rendered in the case of a juvenile,
17 or records containing data from the United States National Crime
18 Information Center shall not be provided. The county police
19 departments shall segregate or sanitize from the police reports
20 information that would result in the [+]likely[+] or actual
21 identification of individuals who furnished information in



1 connection with the investigation or who were of investigatory
2 interest. Records shall not be re-disclosed except to the
3 extent permitted by law.

4 (2) When the defendant is released on conditions after a
5 finding of unfitness to proceed, the department of health shall
6 establish and monitor a fitness restoration program consistent
7 with conditions set by the court order of release, and shall
8 inform the prosecuting attorney of the county that charged the
9 defendant of the program and report the defendant's compliance
10 therewith.

11 [4] (3) [1] When the court, on its own motion or upon the
12 application of the director of health, the prosecuting attorney,
13 or the defendant, determines, after a hearing if a hearing is
14 requested, that the defendant has regained fitness to proceed,
15 the penal proceeding shall be resumed. If, however, the court
16 is of the view that so much time has elapsed since the
17 commitment or release on conditions of the defendant that it
18 would be unjust to resume the proceeding, the court may dismiss
19 the charge and:

20 (a) Order the defendant to be discharged;



- 1 (b) Subject to ~~[the law governing the involuntary civil~~
2 ~~commitment of persons affected by physical or mental~~
3 ~~disease, disorder, or defect,]~~ section 334-60.2
4 regarding involuntary hospitalization criteria, order
5 the defendant to be committed to the custody of the
6 director of health to be placed in an appropriate
7 institution for detention, care, and treatment; or
8 (c) Subject to ~~[the law governing involuntary outpatient~~
9 ~~treatment,]~~ section 334-121 regarding assisted
10 community treatment criteria, order the defendant to
11 be released on conditions the court determines
12 necessary.

13 [-(4)-] If a defendant committed to the custody of the
14 director of health for a limited period pursuant to subsection
15 (1) is not found fit to proceed prior to the expiration of the
16 commitment, the charge for which the defendant was committed for
17 a limited period shall be dismissed. Upon dismissal of the
18 charge, the defendant shall be released from custody unless the
19 defendant is subject to prosecution for other charges~~[, in which~~
20 ~~case, unless the defendant is subject to the law governing~~
21 ~~involuntary civil commitment,]~~ or subject to section 334-60.2



1 regarding involuntary hospitalization criteria, in which case
2 the court shall order the defendant's commitment to the custody
3 of the director of health to be placed in an appropriate
4 institution for detention, care, and treatment. Within a
5 reasonable time following any other commitment under subsection
6 (1), the director of health shall report to the court on whether
7 the defendant presents a substantial likelihood of becoming fit
8 to proceed in the future. The court, in addition, may appoint a
9 panel of three qualified examiners in felony cases or one
10 qualified examiner in nonfelony cases to make a report. If,
11 following [a] the report, the court determines that the
12 defendant probably will remain unfit to proceed, the court may
13 dismiss the charge and:

- 14 (a) Release the defendant; or
15 (b) Subject to [~~the law governing involuntary civil~~
16 ~~commitment,~~] section 334-60.2 regarding involuntary
17 hospitalization criteria, order the defendant to be
18 committed to the custody of the director of health to
19 be placed in an appropriate institution for detention,
20 care, and treatment.



1 [+] (5) [+] If a defendant released on conditions for a
2 limited period pursuant to subsection (1) is not found fit to
3 proceed prior to the expiration of the release on conditions
4 order, the charge for which the defendant was released on
5 conditions for a limited period shall be dismissed. Upon
6 dismissal of the charge, the defendant shall be discharged from
7 the release on conditions unless the defendant is subject to
8 prosecution for other charges or subject to ~~[the law governing~~
9 ~~involuntary civil commitment,]~~ section 334-60.2 regarding
10 involuntary hospitalization criteria, in which case the court
11 shall order the defendant's commitment to the custody of the
12 director of health to be placed in an appropriate institution
13 for detention, care, and treatment. Within a reasonable time
14 following any other release on conditions under subsection (1),
15 the court shall appoint a panel of three qualified examiners in
16 felony cases or one qualified examiner in nonfelony cases to
17 report to the court on whether the defendant presents a
18 substantial likelihood of becoming fit to proceed in the future.
19 If, following the report, the court determines that the
20 defendant probably will remain unfit to proceed, the court may
21 dismiss the charge and:



1 (a) Release the defendant; or

2 (b) Subject to ~~[the law governing involuntary civil~~
3 ~~commitment,]~~ section 334-60.2 regarding involuntary
4 hospitalization criteria, order the defendant to be
5 committed to the custody of the director of health to
6 be placed in an appropriate institution for detention,
7 care, and treatment."

8 SECTION 7. Section 704-407, Hawaii Revised Statutes, is
9 amended by amending subsection (3) to read as follows:

10 "(3) After the hearing, the court shall rule on any legal
11 objection raised by the application and, in an appropriate case,
12 may quash the indictment or other charge, find it to be
13 defective or insufficient, or otherwise terminate the
14 proceedings on the law. ~~[In any such case, unless]~~ Unless all
15 defects in the proceedings are promptly cured, the court shall
16 terminate the commitment or release ordered under section 704-
17 406 and:

18 (a) Order the defendant to be discharged;

19 (b) Subject to ~~[the law governing involuntary civil~~
20 ~~commitment of persons affected by a physical or mental~~
21 ~~disease, disorder, or defect,]~~ section 334-60.2



1 regarding involuntary hospitalization criteria, order
2 the defendant to be committed to the custody of the
3 director of health to be placed in an appropriate
4 institution for detention, care, and treatment; or
5 (c) Subject to ~~[the law governing involuntary outpatient~~
6 ~~treatment,]~~ section 334-121 regarding assisted
7 community treatment criteria, order the defendant to
8 be released on [such] conditions as the court deems
9 necessary."

10 SECTION 8. Section 704-411, Hawaii Revised Statutes, is
11 amended to read as follows:

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

13 "(1) When a defendant is acquitted on the ground of
14 physical or mental disease, disorder, or defect excluding
15 responsibility, the court, on the basis of the report made
16 pursuant to section 704-404, if uncontested, or the medical or
17 psychological evidence given at the trial or at a separate
18 hearing, shall order that:

19 (a) The defendant shall be committed to the custody of the
20 director of health to be placed in an appropriate



1 institution for custody, care, and treatment if the
2 court finds that the defendant:

3 (i) Is affected by a physical or mental disease,
4 disorder, or defect;

5 (ii) Presents a risk of danger to self or others; and

6 (iii) Is not a proper subject for conditional release;

7 provided that the director of health shall place
8 defendants charged with misdemeanors or felonies not
9 involving violence or attempted violence in the least
10 restrictive environment appropriate in light of the
11 defendant's treatment needs and the need to prevent
12 harm to the person confined and others. The county
13 police departments shall provide to the director of
14 health and the defendant copies of all police reports
15 from cases filed against the defendant that have been
16 adjudicated by the acceptance of a plea of guilty or
17 nolo contendere, a finding of guilt, acquittal,
18 acquittal pursuant to section 704-400, or by the entry
19 of a plea of guilty or nolo contendere made pursuant to
20 chapter 853[, ~~so long as~~]; provided that the disclosure
21 to the director of health and the defendant does not



1 frustrate a legitimate function of the county police
2 departments; provided further that expunged records,
3 records of or pertaining to any adjudication or
4 disposition rendered in the case of a juvenile, or
5 records containing data from the United States National
6 Crime Information Center shall not be provided. The
7 county police departments shall segregate or sanitize
8 from the police reports information that would result
9 in the likelihood or actual identification of
10 individuals who furnished information in connection
11 with the investigation or who were of investigatory
12 interest. Records shall not be re-disclosed except to
13 the extent permitted by law;

14 (b) The defendant shall be granted conditional release
15 with conditions as the court deems necessary if the
16 court finds that the defendant is affected by physical
17 or mental disease, disorder, or defect and that the
18 defendant presents a danger to self or others, but
19 that the defendant can be controlled adequately and
20 given proper care, supervision, and treatment if the
21 defendant is released on condition[~~For any~~



~~defendant granted conditional release pursuant to this paragraph, and who was charged with a petty misdemeanor, misdemeanor, or violation, the period of conditional release shall be no longer than one year];~~
or

(c) The defendant shall be discharged 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 self or others and is not in need of care, supervision, or treatment."

2. By amending subsection (3) to read:

"(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



1 of health. The court, in appropriate circumstances,
2 may appoint an additional examiner or examiners; and

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

15 To facilitate the examination and the proceedings thereon, the
16 court may cause the defendant, if not then confined, to be
17 committed to a hospital or other suitable facility for the
18 purpose of examination for a period not exceeding thirty days or
19 [~~such~~] a longer period as the court determines to be necessary
20 for the purpose upon written findings for good cause shown. The
21 court may direct that qualified physicians or psychologists



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

8 SECTION 9. Section 704-411, Hawaii Revised Statutes, is
9 amended by amending subsection (3) to read as follows:

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

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



1 (b) In felony cases, the court shall appoint three
2 qualified examiners to examine and report upon the
3 physical and mental condition of the defendant. In
4 each case, the court shall appoint at least one
5 psychiatrist and at least one licensed psychologist.
6 The third member may be a psychiatrist, a licensed
7 psychologist, or a qualified physician. One of the
8 three shall be a psychiatrist or licensed psychologist
9 designated by the director of health[-] from within
10 the department of health. The three examiners shall
11 be appointed from a list of certified examiners as
12 determined by the department of health.

13 To facilitate the examination and the proceedings thereon, the
14 court may cause the defendant, if not then confined, to be
15 committed to a hospital or other suitable facility for the
16 purpose of examination for a period not exceeding thirty days or
17 a longer period as the court determines to be necessary for the
18 purpose upon written findings for good cause shown. The court
19 may direct that qualified physicians or psychologists retained
20 by the defendant be permitted to witness the examination. The
21 examination and report and the compensation of persons making or



1 assisting in the examination shall be in accord with section
2 704-404(3), (4)(a) and (b), (6), (7), (8), and (9). As used in
3 this section, the term "licensed psychologist" includes
4 psychologists exempted from licensure by section 465-3(a)(3)."

5 SECTION 10. Section 704-413, Hawaii Revised Statutes, is
6 amended by amending subsection (4) to read as follows:

7 "(4) If, at any time after the order pursuant to this
8 chapter granting conditional release, the court determines,
9 after hearing evidence, that:

10 (a) The person is still affected by a physical or mental
11 disease, disorder, or defect, and the conditions of
12 release have not been fulfilled; or

13 (b) For the safety of the person or others, the person's
14 conditional release should be revoked,

15 the court may forthwith modify the conditions of release or
16 order the person to be committed to the custody of the director
17 of health, subject to discharge or release in accordance with
18 the procedure prescribed in section 704-412[-]; provided that,
19 if satisfied that the person would benefit from temporary
20 hospitalization that may render a revocation of conditional
21 release unnecessary, the court, in lieu of revocation, may order



1 hospitalization for a period not to exceed ninety days, subject
2 to extension as appropriate, but in no event for a period
3 exceeding a total of one year, and may reinstate or revoke
4 conditional release at any time during the temporary
5 hospitalization."

6 SECTION 11. Section 704-414, Hawaii Revised Statutes, is
7 amended to read as follows:

8 "§704-414 Procedure upon application for discharge,
9 conditional release, or modification of conditions of release.

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



1 ~~the department of health]~~. The examiners shall be appointed
2 from a list of certified examiners as determined by the
3 department of health. To facilitate the examination and the
4 proceedings thereon, the court may cause the defendant, if not
5 then confined, to be committed to a hospital or other suitable
6 facility for the purpose of the examination and may direct that
7 qualified physicians or psychologists retained by the defendant
8 be permitted to witness the examination. The examination and
9 report and the compensation of persons making or assisting in
10 the examination shall be in accord with section 704-404(3),
11 (4)(a) and (b), (6), (7), (8), and (9). As used in this
12 section, the term "licensed psychologist" includes psychologists
13 exempted from licensure by section 465-3(a)(3).

14 (2) Upon the filing of an application pursuant to section
15 704-413 for modification of conditions of release, the court may
16 proceed as provided in subsection (1)."

17 SECTION 12. Section 704-414, Hawaii Revised Statutes, is
18 amended by amending subsection (1) to read as follows:

19 "(1) Upon filing of an application pursuant to section
20 704-412 for discharge or conditional release, or upon the filing
21 of an application pursuant to section 704-413 for discharge, the



1 court shall appoint three qualified examiners in felony cases,
2 and one qualified examiner in nonfelony cases, to examine and
3 report upon the physical and mental condition of the defendant.
4 In felony cases, the court shall appoint at least one
5 psychiatrist and at least one licensed psychologist. The third
6 member may be a psychiatrist, a licensed psychologist, or a
7 qualified physician. One of the three shall be a psychiatrist
8 or licensed psychologist designated by the director of health[?]
9 from within the department of health. The examiners shall be
10 appointed from a list of certified examiners as determined by
11 the department of health. To facilitate the examination and the
12 proceedings thereon, the court may cause the defendant, if not
13 then confined, to be committed to a hospital or other suitable
14 facility for the purpose of the examination and may direct that
15 qualified physicians or psychologists retained by the defendant
16 be permitted to witness the examination. The examination and
17 report and the compensation of persons making or assisting in
18 the examination shall be in accord with section 704-404(3),
19 (4)(a) and (b), (6), (7), (8), and (9). As used in this
20 section, the term "licensed psychologist" includes psychologists
21 exempted from licensure by section 465-3(a)(3)."



1 PART III

2 SECTION 13. The purpose of this part is to amend chapter
3 706, Hawaii Revised Statutes, regarding disposition of convicted
4 defendants, to:

5 (1) Establish an enumerated priority schedule for payments
6 that defendants are ordered to make following
7 conviction;

8 (2) Require defendants to pay restitution pursuant to
9 chapter 353, Hawaii Revised Statutes, while in
10 custody, notwithstanding any contrary law or court
11 order;

12 (3) Ensure that efforts are made to inform victims and
13 their families of the right to be present at
14 sentencing and to be heard, regardless of whether a
15 pre-sentence diagnosis of the defendant is made or
16 waived;

17 (4) Repeal a provision that precludes a defendant
18 convicted of a crime involving serious or substantial
19 bodily injury within the previous five years from
20 being eligible for intermediate sanctions such as drug



1 court, veterans treatment court, and mental health
2 court;

3 (5) Repeal provisions related to a program of regimental
4 discipline that has not been implemented;

5 (6) Repeal a provision imposing a mandatory minimum prison
6 term on repeat offenders convicted of small drug
7 possession offenses who may be better managed with
8 probation and drug treatment;

9 (7) Authorize probation officers to request expungements
10 on behalf of defendants; and

11 (8) Provide courts with discretion to add certain
12 conditions to probation, including a requirement that
13 a defendant undergo mental health and substance abuse
14 assessment, submit to a search by a probation officer,
15 sign a waiver of extradition, and pay extradition
16 costs.

17 SECTION 14. Chapter 706, Hawaii Revised Statutes, is
18 amended by adding a new section to be appropriately designated
19 and to read as follows:

20 "§706- Payments by defendant; order of priority. When
21 a defendant is ordered to make payments pursuant to chapters



- 1 351, 706, 846F, and 853, or as otherwise provided by law,
2 payments shall be made in the following order of priority:
- 3 (1) Restitution;
 - 4 (2) Crime victims compensation fee;
 - 5 (3) Probation services fee;
 - 6 (4) Human trafficking victim services fee;
 - 7 (5) Other fees, including but not limited to internet
8 crimes against children fee and drug demand reduction
9 assessment fee;
 - 10 (6) DNA analysis monetary assessment; and
 - 11 (7) Fines."

12 SECTION 15. Section 706-601, Hawaii Revised Statutes, is
13 amended by amending subsection (3) to read as follows:

14 "(3) With the consent of the court, the requirement of a
15 pre-sentence diagnosis may be waived by agreement of both the
16 defendant and the prosecuting attorney[-]; provided that in
17 felony cases, the prosecuting attorney shall inform, or make
18 reasonable efforts to inform, the victim or the victim's
19 surviving immediate family members of their rights to be present
20 at the sentencing hearing and to provide information relating to
21 the impact of the crime, including any requested restitution."



1 SECTION 16. Section 706-603, Hawaii Revised Statutes, is
2 amended by amending subsection (4) to read as follows:

3 "(4) Restitution [~~to the victim of a sexual or violent~~
4 ~~crime~~] shall be made before payment of the monetary
5 assessment[-] pursuant to section 706-_____."

6 SECTION 17. Section 706-604, Hawaii Revised Statutes, is
7 amended by amending subsection (3) to read as follows:

8 "(3) In all circuit court cases, regardless of whether a
9 pre-sentence report has been prepared or waived, the court shall
10 afford a fair opportunity to the victim to be heard on the issue
11 of the defendant's disposition, before imposing sentence. The
12 court, service center, or agency personnel who prepare the pre-
13 sentence diagnosis and report shall inform the victim of the
14 sentencing date and of the victim's opportunity to be heard. In
15 the case of a homicide or where the victim is a minor or is
16 otherwise unable to appear at the sentencing hearing, the
17 victim's family shall be afforded the fair opportunity to be
18 heard."

19 SECTION 18. Section 706-605, Hawaii Revised Statutes, is
20 amended by amending subsection (6) to read as follows:



1 "(6) The court shall impose a compensation fee upon every
2 person convicted of a criminal offense pursuant to section
3 351-62.6; provided that the court shall waive the imposition of
4 a compensation fee if it finds that the defendant is unable to
5 pay the compensation fee. When a defendant is ordered to make
6 payments in addition to the compensation fee, payments by the
7 defendant shall be made in the [~~following~~] order of priority[+]

8 ~~(a) Restitution;~~

9 ~~(b) Crime victim compensation fee;~~

10 ~~(c) Probation services fee;~~

11 ~~(d) Other fees; and~~

12 ~~(e) Fines.]~~ established in section 706- ."

13 SECTION 19. Section 706-605.1, Hawaii Revised Statutes, is
14 amended to read as follows:

15 "§706-605.1 Intermediate sanctions; eligibility; criteria
16 and conditions. (1) The judiciary shall implement alternative
17 programs that place, control, supervise, and treat selected
18 defendants in lieu of a sentence of incarceration.

19 (2) Defendants may be considered for sentencing to
20 alternative programs if they[+]



1 ~~(a)~~ Have] have not been convicted of a non-probationable

2 class A felony[, ~~and~~

3 ~~(b)~~ ~~Have not, within the previous five years, been~~

4 ~~convicted of a crime involving serious bodily injury~~

5 ~~or substantial bodily injury as defined by chapter~~

6 ~~707].~~

7 (3) A defendant may be sentenced by a district, family, or
8 circuit court judge to alternative programs.

9 (4) As used in this section, "alternative programs" means
10 programs that[, ~~from time to time,~~] are created and funded by
11 legislative appropriation or federal grant naming the judiciary
12 or one of its operating agencies as the expending agency and
13 that are intended to provide an alternative to incarceration.
14 Alternative programs may include:

15 (a) House arrest, or curfew using electronic monitoring
16 and surveillance, or both;

17 (b) Drug court programs for defendants with assessed
18 alcohol or drug abuse problems, or both;

19 (c) Therapeutic residential and nonresidential programs,
20 including secure drug treatment facilities;



1 ~~[(d) A program of regimental discipline pursuant to section~~

2 ~~706-605.5,]~~ and

3 ~~[(e)]~~ (d) Similar programs created and designated as

4 alternative programs by the legislature or the

5 administrative director of the courts for qualified

6 defendants who do not pose significant risks to the

7 community."

8 SECTION 20. Section 706-606.5, Hawaii Revised Statutes, is
9 amended to read as follows:

10 "§706-606.5 Sentencing of repeat offenders. (1)

11 Notwithstanding section 706-669 and any other law to the
12 contrary, any person convicted of murder in the second degree,
13 any class A felony, any class B felony, or any of the following
14 class C felonies: ~~[section]~~

15 (a) Section 134-7 relating to persons prohibited from
16 owning, possessing, or controlling firearms or
17 ammunition; ~~[section]~~

18 (b) Section 134-8 relating to ownership, etc., of certain
19 prohibited weapons; ~~[section]~~



- 1 (c) Section 134-17 only as it relates to providing false
2 information or evidence to obtain a permit under
3 section 134-9; [~~section~~]
- 4 (d) Section 188-23 relating to possession or use of
5 explosives, electrofishing devices, and poisonous
6 substances in state waters; [~~section~~]
- 7 (e) Section 386-98(d) (1) relating to fraud violations and
8 penalties; [~~section~~]
- 9 (f) Section 431:2-403(b) (2) relating to insurance fraud;
10 [~~section~~]
- 11 (g) Section 707-703 relating to negligent homicide in the
12 second degree; [~~section~~]
- 13 (h) Section 707-711 relating to assault in the second
14 degree; [~~section~~]
- 15 (i) Section 707-713 relating to reckless endangering in
16 the first degree; [~~section~~]
- 17 (j) Section 707-716 relating to terroristic threatening in
18 the first degree; [~~section~~]
- 19 (k) Section 707-721 relating to unlawful imprisonment in
20 the first degree; [~~section~~]



- 1 (l) Section 707-732 relating to sexual assault in the
2 third degree; [~~section~~]
- 3 (m) Section 707-752 relating to promoting child abuse in
4 the third degree; [~~section~~]
- 5 (n) Section 707-757 relating to electronic enticement of a
6 child in the second degree; [~~section~~]
- 7 (o) Section 707-766 relating to extortion in the second
8 degree; [~~section~~]
- 9 (p) Section 708-811 relating to burglary in the second
10 degree; [~~section~~]
- 11 (q) Section 708-821 relating to criminal property damage
12 in the second degree; [~~section~~]
- 13 (r) Section 708-831 relating to theft in the second
14 degree; [~~section~~]
- 15 (s) Section 708-835.5 relating to theft of livestock;
16 [~~section~~]
- 17 (t) Section 708-836 relating to unauthorized control of
18 propelled vehicle; [~~section~~]
- 19 (u) Section 708-839.55 relating to unauthorized possession
20 of confidential personal information; [~~section~~]



- 1 (v) Section 708-839.8 relating to identity theft in the
2 third degree; [~~section~~]
- 3 (w) Section 708-852 relating to forgery in the second
4 degree; [~~section~~]
- 5 (x) Section 708-854 relating to criminal possession of a
6 forgery device; [~~section~~]
- 7 (y) Section 708-875 relating to trademark counterfeiting;
8 [~~section~~]
- 9 (z) Section 710-1071 relating to intimidating a witness;
10 [~~section~~]
- 11 (aa) Section 711-1103 relating to riot; [~~section~~]
- 12 (bb) Section 712-1221 relating to promoting gambling in the
13 first degree; [~~section~~]
- 14 (cc) Section 712-1224 relating to possession of gambling
15 records in the first degree; [~~section 712-1243~~
16 ~~relating to promoting a dangerous drug in the third~~
17 ~~degree; section~~]
- 18 (dd) Section 712-1247 relating to promoting a detrimental
19 drug in the first degree; [~~section~~] or
- 20 (ee) Section 846E-9 relating to failure to comply with
21 covered offender registration requirements,



1 or who is convicted of attempting to commit murder in the second
2 degree, any class A felony, any class B felony, or any of the
3 class C felony offenses enumerated above and who has a prior
4 conviction or prior convictions for the following felonies,
5 including an attempt to commit the same: murder, murder in the
6 first or second degree, a class A felony, a class B felony, any
7 of the class C felony offenses enumerated above, or any felony
8 conviction of another jurisdiction, shall be sentenced to a
9 mandatory minimum period of imprisonment without possibility of
10 parole [~~during such period as follows:~~] as provided in
11 subsection (2).

12 (2) A mandatory minimum period of imprisonment without
13 possibility of parole during that period shall be imposed
14 pursuant to subsection (1), as follows:

15 (a) One prior felony conviction:

16 (i) Where the instant conviction is for murder in the
17 second degree or attempted murder in the second
18 degree--ten years;

19 (ii) Where the instant conviction is for a class A
20 felony--six years, eight months;



- 1 (iii) Where the instant conviction is for a class B
2 felony--three years, four months; and
- 3 (iv) Where the instant conviction is for a class C
4 felony offense enumerated above--one year, eight
5 months;
- 6 (b) Two prior felony convictions:
- 7 (i) Where the instant conviction is for murder in the
8 second degree or attempted murder in the second
9 degree--twenty years;
- 10 (ii) Where the instant conviction is for a class A
11 felony--thirteen years, four months;
- 12 (iii) Where the instant conviction is for a class B
13 felony--six years, eight months; and
- 14 (iv) Where the instant conviction is for a class C
15 felony offense enumerated above--three years,
16 four months; and
- 17 (c) Three or more prior felony convictions:
- 18 (i) Where the instant conviction is for murder in the
19 second degree or attempted murder in the second
20 degree--thirty years;



1 (ii) Where the instant conviction is for a class A

2 felony--twenty years;

3 (iii) Where the instant conviction is for a class B

4 felony--ten years; and

5 (iv) Where the instant conviction is for a class C

6 felony offense enumerated above--five years.

7 [~~42~~] (3) Except as provided in subsection [~~43~~], (4), a
8 person shall not be sentenced to a mandatory minimum period of
9 imprisonment under this section unless the instant felony
10 offense was committed during [~~such~~] the period as follows:

11 (a) Within twenty years after a prior felony conviction
12 where the prior felony conviction was for murder in
13 the first degree or attempted murder in the first
14 degree;

15 (b) Within twenty years after a prior felony conviction
16 where the prior felony conviction was for murder in
17 the second degree or attempted murder in the second
18 degree;

19 (c) Within twenty years after a prior felony conviction
20 where the prior felony conviction was for a class A
21 felony;



1 (d) Within ten years after a prior felony conviction where
2 the prior felony conviction was for a class B felony;

3 (e) Within five years after a prior felony conviction
4 where the prior felony conviction was for a class C
5 felony offense enumerated above;

6 (f) Within the maximum term of imprisonment possible after
7 a prior felony conviction of another jurisdiction.

8 [~~4~~] (4) If a person was sentenced for a prior felony
9 conviction to a special term under section 706-667, then the
10 person shall not be sentenced to a mandatory minimum period of
11 imprisonment under this section unless the instant felony
12 offense was committed during [~~such~~] that period as follows:

13 (a) Within eight years after a prior felony conviction
14 where the prior felony conviction was for a class A
15 felony;

16 (b) Within five years after the prior felony conviction
17 where the prior felony conviction was for a class B
18 felony;

19 (c) Within four years after the prior felony conviction
20 where the prior felony conviction was for a class C
21 felony offense enumerated above.



1 [~~4~~] (5) Notwithstanding any other law to the contrary,
2 any person convicted of any of the following misdemeanor
3 offenses:

4 (a) Section 707-712 relating to assault in the third
5 degree;

6 (b) Section 707-717 relating to terroristic threatening in
7 the second degree;

8 (c) Section 707-733 relating to sexual assault in the
9 fourth degree;

10 (d) Section 708-822 relating to criminal property damage
11 in the third degree;

12 (e) Section 708-832 relating to theft in the third degree;
13 and

14 (f) Section 708-833.5(2) relating to misdemeanor
15 shoplifting,

16 and who has been convicted of any of the offenses enumerated
17 above on at least three prior and separate occasions within
18 three years of the date of the commission of the present
19 offense, shall be sentenced to no less than nine months of
20 imprisonment. Whenever a court sentences a defendant under this
21 subsection for an offense under section 707-733, the court shall



1 order the defendant to participate in a sex offender assessment
2 and, if recommended based on the assessment, participate in the
3 sex offender treatment program established by chapter 353E.

4 ~~[-(5)-]~~ (6) The sentencing court may impose the above
5 sentences consecutive to any sentence imposed on the defendant
6 for a prior conviction, but ~~[such]~~ the sentence shall be imposed
7 concurrent to the sentence imposed for the instant conviction.

8 The court may impose a lesser mandatory minimum period of
9 imprisonment without possibility of parole than that mandated by
10 this section where the court finds that strong mitigating
11 circumstances warrant ~~[such]~~ the action. Strong mitigating
12 circumstances shall include, but shall not be limited to the
13 provisions of section 706-621. The court shall provide a
14 written opinion stating its reasons for imposing the lesser
15 sentence.

16 ~~[-(6)-]~~ (7) A person who is imprisoned in a correctional
17 institution pursuant to subsection (1) shall not be paroled
18 prior to the expiration of the mandatory minimum term of
19 imprisonment imposed pursuant to subsection (1).

20 ~~[-(7)-]~~ (8) For purposes of this section:



(a) Convictions under two or more counts of an indictment or complaint shall be considered a single conviction without regard to when the convictions occur;

(b) A prior conviction in this or another jurisdiction shall be deemed a felony conviction if it was punishable by a sentence of death or of imprisonment in excess of one year; and

(c) A conviction occurs on the date judgment is entered."

SECTION 21. Section 706-622.5, Hawaii Revised Statutes, is amended as follows:

1. By amending subsection (1) to read:

"(1) Notwithstanding section 706-620(3), a person convicted for the first or second 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 of any dangerous drug, detrimental drug, harmful drug, intoxicating compound, marijuana, or marijuana concentrate, as defined in section 712-1240, 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



1 ~~[trafficking]~~ offenses under sections 712-1240.7 ~~[and]~~,
2 712-1240.8~~[7]~~ as that section was in effect prior to July 1,
3 2016, 712-1241, and 712-1242, is eligible to be sentenced to
4 probation under subsection (2) if the person meets the following
5 criteria:

- 6 (a) The court has determined that the person is nonviolent
7 after reviewing the person's criminal history, the
8 factual circumstances of the offense for which the
9 person is being sentenced, and any other relevant
10 information;
- 11 (b) The person has been assessed by a certified substance
12 abuse counselor to be in need of substance abuse
13 treatment due to dependency or abuse under the
14 applicable Diagnostic and Statistical Manual and
15 Addiction Severity Index; and
- 16 (c) Except for those persons directed to substance abuse
17 treatment under the supervision of the drug court, the
18 person presents a proposal to receive substance abuse
19 treatment in accordance with the treatment plan
20 prepared by a certified substance abuse counselor
21 through a substance abuse treatment program that



1 includes an identified source of payment for the
2 treatment program."

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

4 "(4) [~~The court, upon~~] Upon written application from a
5 person sentenced under this part [7] or a probation officer, the
6 court shall issue a court order to expunge the record of
7 conviction for that particular offense; provided that a person
8 has successfully completed the substance abuse treatment program
9 and complied with other terms and conditions of probation. A
10 person sentenced to probation under this section who has not
11 previously been sentenced under this section shall be eligible
12 for one time only for expungement under this subsection."

13 SECTION 22. Section 706-622.9, Hawaii Revised Statutes, is
14 amended by amending subsection (3) to read as follows:

15 "(3) [~~The court, upon~~] Upon written application from a
16 person sentenced under this part [7] or a probation officer, the
17 court shall issue a court order to expunge the record of
18 conviction for that particular offense; provided that a person
19 has successfully completed the substance abuse treatment program
20 and complied with other terms and conditions of probation. A
21 person sentenced to probation under this section shall be



1 eligible for expungement under this subsection only if the
2 person has not been previously convicted of a felony offense in
3 this or another jurisdiction."

4 SECTION 23. Section 706-624, Hawaii Revised Statutes, is
5 amended by amending subsection (2) to read as follows:

6 "(2) Discretionary conditions. The court may provide, as
7 further conditions of a sentence of probation, to the extent
8 that the conditions are reasonably related to the factors set
9 forth in section 706-606 and to the extent that the conditions
10 involve only deprivations of liberty or property as are
11 reasonably necessary for the purposes indicated in section 706-
12 606(2), that the defendant:

13 (a) Serve a term of imprisonment to be determined by the
14 court at sentencing in class A felony cases under
15 section 707-702, not exceeding two years in class A
16 felony cases under part IV of chapter 712, not
17 exceeding eighteen months in class B felony cases, not
18 exceeding one year in class C felony cases, not
19 exceeding six months in misdemeanor cases, and not
20 exceeding five days in petty misdemeanor cases;
21 provided that notwithstanding any other provision of



1 law, any order of imprisonment under this subsection
2 that provides for prison work release shall require
3 the defendant to pay thirty per cent of the
4 defendant's gross pay earned during the prison work
5 release period to satisfy any restitution order. The
6 payment shall be handled by the adult probation
7 division and shall be paid to the victim on a monthly
8 basis;

9 (b) Perform a specified number of hours of services to the
10 community as described in section 706-605(1)(d);

11 (c) Support the defendant's dependents and meet other
12 family responsibilities;

13 (d) Pay a fine imposed pursuant to section 706-605(1)(b);

14 (e) Work conscientiously at suitable employment or pursue
15 conscientiously a course of study or vocational
16 training that will equip the defendant for suitable
17 employment;

18 (f) Refrain from engaging in a specified occupation,
19 business, or profession bearing a reasonably direct
20 relationship to the conduct constituting the crime or
21 engage in the specified occupation, business, or



- 1 profession only to a stated degree or under stated
2 circumstances;
- 3 (g) Refrain from frequenting specified kinds of places or
4 from associating unnecessarily with specified persons,
5 including the victim of the crime, any witnesses,
6 regardless of whether they actually testified in the
7 prosecution, law enforcement officers, co-defendants,
8 or other individuals with whom contact may adversely
9 affect the rehabilitation or reformation of the person
10 convicted;
- 11 (h) Refrain from use of alcohol or any use of narcotic
12 drugs or controlled substances without a prescription;
- 13 (i) Refrain from possessing a firearm, ammunition,
14 destructive device, or other dangerous weapon;
- 15 (j) Undergo available medical or mental health assessment
16 and treatment, including assessment and treatment for
17 substance abuse dependency, and remain in a specified
18 facility if required for that purpose;
- 19 (k) Reside in a specified place or area or refrain from
20 residing in a specified place or area;



(l) Submit to periodic urinalysis or other similar testing procedure;

(m) Refrain from entering specified geographical areas without the court's permission;

(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 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; [ex]

(q) Submit to a search by any probation officer, with or without a warrant, of the defendant's person, residence, vehicle, or other sites or property under the defendant's control, based upon the probation officer's reasonable suspicion that illicit substances



1 or contraband may be found on the person or in the
2 place to be searched;
3 (r) Sign a waiver of extradition and pay extradition costs
4 as determined and ordered by the court;
5 (s) Comply with a service plan developed using current
6 assessment tools; and
7 ~~[-(g)-]~~ (t) Satisfy other reasonable conditions as the court
8 may impose."

9 SECTION 24. Section 706-642, Hawaii Revised Statutes, is
10 amended by amending subsection (3) to read as follows:

11 "(3) When a defendant sentenced to pay a fine is also
12 ordered to make restitution or reparation to the victim or
13 victims, or to the person or party who has incurred loss or
14 damage because of the defendant's crime, the payment of
15 restitution or reparation shall have priority over the payment
16 of the fine~~[-]~~, pursuant to section 706- . No fine shall be
17 collected until the restitution or reparation order has been
18 satisfied."

19 SECTION 25. Section 706-646, Hawaii Revised Statutes, is
20 amended by amending subsections (2) and (3) to read as follows:



1 "(2) The court shall order the defendant to make
2 restitution for reasonable and verified losses suffered by the
3 victim or victims as a result of the defendant's offense when
4 requested by the victim. The court shall order restitution to
5 be paid to the crime victim compensation commission [~~in the~~
6 ~~event that~~] if the victim has been given an award for
7 compensation under chapter 351. If the court orders payment of
8 a fine in addition to restitution or a compensation fee, or
9 both, the payment of restitution and compensation fee shall
10 ~~[have priority over the payment of the fine, and payment of~~
11 ~~restitution shall have priority over payment of a compensation~~
12 ~~fee.]~~ be made pursuant to section 706- .
13 (3) In ordering restitution, the court shall not consider
14 the defendant's financial ability to make restitution in
15 determining the amount of restitution to order. The court,
16 however, shall consider the defendant's financial ability to
17 make restitution for the purpose of establishing the time and
18 manner of payment. The court shall specify the time and manner
19 in which restitution is to be paid. While the defendant is in
20 the custody of the department of public safety, restitution
21 shall be collected pursuant to chapter 353 and any court-ordered



1 payment schedule shall be suspended. Restitution shall be a
2 dollar amount that is sufficient to reimburse any victim fully
3 for losses, including but not limited to:

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

8 (b) Medical expenses; and

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

11 SECTION 26. Section 706-648, Hawaii Revised Statutes, is
12 amended by amending subsection (2) to read as follows:

13 "(2) The entire fee ordered or assessed shall be payable
14 forthwith by cash, check, or by a credit card approved by the
15 court. When a defendant is also ordered to pay a fine, make
16 restitution, pay a crime victim compensation fee, or pay other
17 fees in addition to the probation services fee under subsection
18 (1), payments by the defendant shall be made ~~[in the following~~
19 ~~order of priority:~~

20 ~~(a) Restitution;~~

21 ~~(b) Crime victim compensation fee;~~



1 ~~(e) Probation services fee;~~

2 ~~(d) Other fees; and~~

3 ~~(e) Fines.] pursuant to section 706-_____."~~

4 SECTION 27. Section 706-650, Hawaii Revised Statutes, is
5 amended to read as follows:

6 "[~~4~~]~~§706-650~~[~~3~~] Drug demand reduction assessments; special
7 fund. (1) In addition to any disposition authorized by chapter
8 706 or 853, any person who is:

9 (a) Convicted of an offense under part IV of chapter 712,
10 except sections 712-1250.5 and 712-1257;

11 (b) Convicted under section 707-702.5;

12 (c) Convicted of a felony or misdemeanor offense under
13 part IV of chapter 329;

14 (d) Convicted under section 291-3.1, 291-3.2, 291-3.3,
15 291E-61, or 291E-61.5;

16 (e) Found in violation of part III of chapter 291E; or

17 (f) Charged with any offense under paragraphs (a) to (d)
18 who has been granted a deferred acceptance of guilty
19 or no contest plea;

20 shall be ordered to pay a monetary assessment under subsection

21 (2), except as provided under subsection [~~(6)~~] (5).



1 (2) Monetary assessments for individuals subject to
2 subsection (1) shall not exceed the following:

3 (a) \$3,000 when the offense is a class A felony;

4 (b) \$2,000 when the offense is a class B felony;

5 (c) \$1,000 when the offense is a class C felony;

6 (d) \$500 when the offense is a misdemeanor; or

7 (e) \$250 when the person has been found guilty of an
8 offense under section 712-1249, 291-3.1, 291-3.2, 291-
9 3.3, 291E-61, or has been found in violation of part
10 III of chapter 291E.

11 Notwithstanding sections 706-640 and 706-641 and any other law
12 to the contrary, the assessments provided by this section shall
13 be in addition to and not in lieu of, and shall not be used to
14 offset or reduce, any fine authorized or required by law[-] and
15 shall be paid pursuant to section 706- .

16 (3) There is established a special fund to be known as the
17 "drug demand reduction assessments special fund" to be
18 administered by the department of health. The disbursement of
19 money from the drug demand reduction assessments special fund
20 shall be used to supplement substance abuse treatment and other
21 substance abuse demand reduction programs.



(4) All monetary assessments paid and interest accrued on funds collected pursuant to this section shall be deposited into the drug demand reduction assessments special fund.

~~[(5) Restitution to the victim of a crime enumerated in subsection (1) shall be made, and probation fees and crime victim compensation fees imposed under part III of chapter 706 shall be paid, before payment of the monetary assessment.]~~

~~(6)]~~ (5) If the court determines that the person has the ability to pay the monetary assessment and is eligible for probation or will not be sentenced to incarceration, unless otherwise required by law, the court may order the person to undergo a substance abuse treatment program at the person's expense. If the person undergoes a substance abuse treatment program at the person's expense, the court may waive or reduce the amount of the monetary assessment. Upon a showing by the person that the person lacks the financial ability to pay all or part of the monetary assessment, the court may waive or reduce the amount of the monetary assessment."

SECTION 28. Section 706-650.5, Hawaii Revised Statutes, is amended by amending subsection (5) to read as follows:



1 "(5) When a defendant is ordered to make payments in
2 addition to the human trafficking victim services fee authorized
3 under subsection (2), payments by the defendant shall be made
4 ~~[in the following order of priority:~~

5 ~~(a) Restitution imposed under section 706-646, 707-785, or~~
6 ~~707-786;~~

7 ~~(b) Crime victim compensation fee imposed under section~~
8 ~~351-62.6;~~

9 ~~(c) Probation services fee imposed under section 706-648;~~

10 ~~(d) Human trafficking victim services fee imposed under~~
11 ~~subsection (2);~~

12 ~~(e) Other fees; and~~

13 ~~(f) Fines.] pursuant to section 706-_____."~~

14 SECTION 29. Section 706-660, Hawaii Revised Statutes, is
15 amended by amending subsection (2) to read as follows:

16 "(2) A person who has been convicted of a class B or class
17 C felony for any offense under part IV of chapter 712 may be
18 sentenced to an indeterminate term of imprisonment; provided
19 that this subsection shall not apply to sentences imposed under
20 sections 706-606.5, 706-660.1, 712-1240.5, 712-1240.8[7] as that



1 section was in effect prior to July 1, 2016, 712-1242, 712-1245,
2 712-1249.5, 712-1249.6, 712-1249.7, and 712-1257.

3 When ordering a sentence under this subsection, the court
4 shall impose a term of imprisonment, which shall be as follows:

5 (a) For a class B felony--ten years or less, but not less
6 than five years; and

7 (b) For a class C felony--five years or less, but not less
8 than one year.

9 The minimum length of imprisonment shall be determined by the
10 Hawaii paroling authority in accordance with section 706-669."

11 SECTION 30. Section 706-605.5, Hawaii Revised Statutes, is
12 repealed.

13 ~~["§706-605.5] Program of regimental discipline. (1) The~~
14 ~~department of public safety is authorized to implement a~~
15 ~~rigorous offender program based on regimental discipline.~~
16 ~~Participants shall undergo a regimen of hard work, physical~~
17 ~~training, intensive counseling, and educational and treatment~~
18 ~~programs within a highly structured and motivational~~
19 ~~environment. The program shall be available to defendants and~~
20 ~~committed persons who:~~

21 ~~(a) Have not been convicted of a class A felony;~~



1 ~~(b) Are not considered violent,~~

2 ~~(c) Are chosen by the director of public safety,~~

3 ~~(d) Are in good physical condition,~~

4 ~~(e) Have not been previously sentenced to an indeterminate~~

5 ~~term of imprisonment, and~~

6 ~~(f) Are willing to participate in the program.~~

7 ~~(2) The court, with the approval of the director of public~~
8 ~~safety, may order a defendant to satisfactorily complete a~~
9 ~~program of regimental discipline of not less than ninety days~~
10 ~~before the court sentences a defendant or as a condition of~~
11 ~~probation or a deferred acceptance of guilty plea.~~

12 ~~(3) If a defendant is ordered to complete a program, the~~
13 ~~director of public safety shall certify to the court whether the~~
14 ~~defendant completed the program satisfactorily. If the~~
15 ~~defendant fails to complete the program satisfactorily as a~~
16 ~~condition of a deferred acceptance of guilty plea, such a~~
17 ~~failure shall be considered in accordance with section 853-3.~~
18 ~~If a defendant fails to complete the program satisfactorily as a~~
19 ~~condition of probation, such a failure shall be considered in~~
20 ~~accordance with section 706-625."]~~



PART IV

SECTION 31. The purpose of this part is to amend chapter 707, Hawaii Revised Statutes, regarding offenses against the person, to:

(1) Amend the definition of "sexual contact" to repeal language that:

(A) Exempts married couples from certain sexual assault offenses; and

(B) Has the effect of requiring the prosecution to allege and prove that a victim who was a minor under the age of fourteen was not married to the offender, even though a minor of that age cannot legally marry in any event;

(2) Amend the definition of sexual assault in the fourth degree to maintain an exception for married couples because of the relatively low threshold for culpability in that offense; and

(3) Align the organization of the mental state requirements for assault in the second degree with that of assault in the third degree.



1 SECTION 32. Section 707-700, Hawaii Revised Statutes, is
2 amended by amending the definition of "sexual contact" to read
3 as follows:

4 "Sexual contact" means any touching, other than acts of
5 "sexual penetration", of the sexual or other intimate parts of
6 ~~[a person not married to the actor,~~ another, or of the sexual
7 or other intimate parts of the actor by ~~[the person,~~ another,
8 whether directly or through the clothing or other material
9 intended to cover the sexual or other intimate parts."

10 SECTION 33. Section 707-711, Hawaii Revised Statutes, is
11 amended by amending subsection (1) to read as follows:

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

14 (a) The person intentionally ~~[ex]~~, knowingly, or
15 recklessly causes substantial bodily injury to
16 another;

17 (b) The person recklessly causes serious ~~[ex-substantial]~~
18 bodily injury to another;

19 (c) The person intentionally or knowingly causes bodily
20 injury to a correctional worker, as defined in section



1 710-1031(2), who is engaged in the performance of duty
2 or who is within a correctional facility;

3 (d) The person intentionally or knowingly causes bodily
4 injury to another with a dangerous instrument;

5 (e) The person intentionally or knowingly causes bodily
6 injury to an educational worker who is engaged in the
7 performance of duty or who is within an educational
8 facility. For the purposes of this paragraph,
9 "educational worker" means any administrator,
10 specialist, counselor, teacher, or employee of the
11 department of education or an employee of a charter
12 school; a person who is a volunteer, as defined in
13 section 90-1, in a school program, activity, or
14 function that is established, sanctioned, or approved
15 by the department of education; or a person hired by
16 the department of education on a contractual basis and
17 engaged in carrying out an educational function;

18 (f) The person intentionally or knowingly causes bodily
19 injury to any emergency medical services provider who
20 is engaged in the performance of duty. For the
21 purposes of this paragraph, "emergency medical



1 services provider" means emergency medical services
2 personnel, as defined in section 321-222, and
3 physicians, physician's assistants, nurses, nurse
4 practitioners, certified registered nurse
5 anesthetists, respiratory therapists, laboratory
6 technicians, radiology technicians, and social
7 workers, providing services in the emergency room of a
8 hospital;

9 (g) The person intentionally or knowingly causes bodily
10 injury to a person employed at a state-operated or
11 -contracted mental health facility. For the purposes
12 of this paragraph, "a person employed at a state-
13 operated or -contracted mental health facility"
14 includes health care professionals as defined in
15 section 451D-2, administrators, orderlies, security
16 personnel, volunteers, and any other person who is
17 engaged in the performance of a duty at a state-
18 operated or -contracted mental health facility;

19 (h) The person intentionally or knowingly causes bodily
20 injury to a person who:



1 (i) The defendant has been restrained from, by order
2 of any court, including an ex parte order,
3 contacting, threatening, or physically abusing
4 pursuant to chapter 586; or
5 (ii) Is being protected by a police officer ordering
6 the defendant to leave the premises of that
7 protected person pursuant to section 709-906(4),
8 during the effective period of that order; or
9 [+] (i) [+] The person intentionally or knowingly causes bodily
10 injury to any firefighter or water safety officer who
11 is engaged in the performance of duty. For the
12 purposes of this paragraph, "firefighter" has the same
13 meaning as in section 710-1012 and "water safety
14 officer" means any public servant employed by the
15 United States, the State, or any county as a lifeguard
16 or person authorized to conduct water rescue or ocean
17 safety functions."

18 SECTION 34. Section 707-733, Hawaii Revised Statutes, is
19 amended by amending subsection (1) to read as follows:

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



- 1 (a) The person knowingly subjects another person, not
2 married to the actor, to sexual contact by compulsion
3 or causes another person, not married to the actor, to
4 have sexual contact with the actor by compulsion;
- 5 (b) The person knowingly exposes the person's genitals to
6 another person under circumstances in which the
7 actor's conduct is likely to alarm the other person or
8 put the other person in fear of bodily injury; or
- 9 (c) The person knowingly trespasses on property for the
10 purpose of subjecting another person to surreptitious
11 surveillance for the sexual gratification of the
12 actor."

PART V

14 SECTION 35. The legislature finds that Act 49, Session
15 Laws of Hawaii 2004, established the offense of habitual
16 property crime, a class C felony, in section 708-803, Hawaii
17 Revised Statutes. The legislature found that, in 2002, Hawaii
18 ranked first in the nation for property crime rates and second
19 in larceny theft rates, and that a large portion of the crimes
20 are committed by habitual offenders. The legislature also found
21 that Act 49 would punish repeat property crime offenders by



1 making what would otherwise be a misdemeanor offense a class C
2 felony.

3 The legislature also finds that the Federal Bureau of
4 Investigation reported in 2012 that Hawaii ranked thirty-first
5 out of fifty-two jurisdictions regarding the rate of property
6 crimes per one hundred thousand inhabitants. Act 118, Session
7 Laws 2014, amended section 708-803(4), Hawaii Revised Statutes,
8 by clarifying that the sentence for a person convicted of
9 habitual property crime will be: (1) an indeterminate term of
10 imprisonment of five years, with a minimum term of one year; or
11 (2) for a first conviction only, a term of probation of five
12 years, with conditions to include but not be limited to one year
13 of imprisonment.

14 The legislature further finds that the dollar amount that
15 makes a theft offense a felony ranges among the states from \$200
16 in New Jersey and Virginia to \$2,500 in Wisconsin. The State's
17 felony theft threshold is the fifth lowest among fifty-one
18 jurisdictions, putting Hawaii in the bottom ten per cent.
19 Thirty-one of those jurisdictions have felony theft thresholds
20 of \$1,000 or more. Twenty-six states have increased the felony
21 theft threshold since 2005. Hawaii's threshold is \$300 and was



1 last raised in 1986, from \$200. The impetus to increase felony
2 theft thresholds often is the anticipated reductions to prison
3 populations and associated expenses.

4 The legislature further finds that the most frequently
5 cited rationale for the increase in the felony theft threshold
6 is inflation, as measured by the United States Department of
7 Labor's Consumer Price Index, and concerns about fundamental
8 fairness when dollar values have not been adjusted in years,
9 even decades, despite inflation. Other factors considered
10 include the felony theft thresholds of adjacent states and the
11 impact that increasing thresholds could have on frequent victims
12 of property crimes, including retail businesses.

13 The purpose of this part is to improve property crime
14 enforcement by making more repeat offenders of crimes prohibited
15 by this chapter subject to punishment for a class C felony when
16 they commit another subject offense. This Act also balances the
17 need to target professional theft and other property rights
18 offenders with the need to update the State's felony theft
19 threshold. More specifically, this part amends chapter 708,
20 Hawaii Revised Statutes, regarding offenses against property
21 rights by:



- (1) Including more repeat theft and other property rights offenders within the definition of "habitual property crime perpetrator" and holding them accountable for more of their prior convictions, by increasing the look-back period for prior convictions from five years to ten years, by reducing by one offense the number of prior convictions needed to qualify as habitual, by allowing three petty misdemeanors to qualify as habitual, and by eliminating the requirement that convictions have occurred on separate dates;
- (2) Declaring that the state of mind required to commit the offense of habitual property crime does not apply to the offender's status as a habitual property crime perpetrator because the offender's culpability arises from the offender's status, not from the offender's state of mind with regard to that status;
- (3) Increasing the dollar amount that makes an offense a felony for the offenses of theft in the second degree, theft in the third degree, shoplifting, and theft of utility services, to partially reflect the effect of



1 inflation since the felony theft threshold was last
2 raised; and

- 3 (4) Repealing a provision that subjects a person to a
4 separate charge and enhanced penalty for using a
5 computer to commit an underlying theft crime because
6 it seems unduly harsh, given the prevalence of "smart
7 phones" and other computing devices.

8 SECTION 36. Section 708-803, Hawaii Revised Statutes, is
9 amended to read as follows:

10 "§708-803 Habitual property crime. (1) A person commits
11 the offense of habitual property crime if the person is a
12 habitual property crime perpetrator and commits a ~~[misdemeanor~~
13 ~~offense within this chapter.]~~ property crime.

14 (2) For the purposes of this section, "habitual property
15 crime perpetrator" means a person who, within ~~[five]~~ ten years
16 of the instant offense, has convictions for~~[+]~~ offenses within
17 this chapter for:

- 18 (a) ~~[Three felonies within this chapter,]~~ Any combination
19 of two felonies or misdemeanors; or

- 20 (b) ~~[Three misdemeanors within this chapter; or~~



1 ~~(e) Any combination of three felonies and misdemeanors~~
2 ~~within this chapter.]~~ Any combination of either one
3 felony or one misdemeanor and one petty misdemeanor;
4 or

5 (c) Three petty misdemeanors.

6 The convictions ~~[must have occurred on separate dates and]~~ shall
7 be for separate incidents on separate dates. The prosecution is
8 not required to prove any state of mind with respect to the
9 person's status as a habitual property crime perpetrator. Proof
10 that the person has the requisite minimum prior convictions
11 shall be sufficient to establish this element.

12 (3) A person commits a property crime if the person
13 engages in conduct that constitutes an offense under this
14 chapter. It can be established that the person has committed a
15 property crime by either the prosecution proving that the person
16 is guilty of or by the person pleading guilty or no contest to
17 committing any offense under this chapter.

18 ~~[-(3)-]~~ (4) Habitual property crime is a class C felony.

19 ~~[-(4)-]~~ (5) For a conviction under this section, the
20 sentence shall be either:



1 (a) An indeterminate term of imprisonment of five years;
2 provided that the minimum term of imprisonment shall
3 be not less than one year; or

4 (b) A term of probation of five years, with conditions to
5 include but not be limited to one year of
6 imprisonment; provided that probation shall only be
7 available for a first conviction under this section."

8 SECTION 37. Section 708-831, Hawaii Revised Statutes, is
9 amended by amending subsection (1) to read as follows:

10 "(1) A person commits the offense of theft in the second
11 degree if the person commits theft:

12 (a) Of property from the person of another;

13 (b) Of property or services the value of which exceeds
14 [~~\$300~~] \$750;

15 (c) Of an aquacultural product or part thereof from
16 premises that are fenced or enclosed in a manner
17 designed to exclude intruders or there is prominently
18 displayed on the premises a sign or signs sufficient
19 to give notice and reading as follows: "Private
20 Property", "No Trespassing", or a substantially
21 similar message;



- 1 (d) Of agricultural equipment, supplies, or products, or
2 part thereof, the value of which exceeds \$100 but does
3 not exceed \$20,000, or of agricultural products that
4 exceed twenty-five pounds, from premises that are
5 fenced, enclosed, or secured in a manner designed to
6 exclude intruders or there is prominently displayed on
7 the premises a sign or signs sufficient to give notice
8 and reading as follows: "Private Property", "No
9 Trespassing", or a substantially similar message; or
10 if at the point of entry of the premise, a crop is
11 visible. The sign or signs, containing letters not
12 less than two inches in height, shall be placed along
13 the boundary line of the land in a manner and in such
14 a position as to be clearly noticeable from outside
15 the boundary line. Possession of agricultural
16 products without ownership and movement certificates,
17 when a certificate is required pursuant to chapter
18 145, is prima facie evidence that the products are or
19 have been stolen; or
- 20 (e) Of agricultural commodities that are generally known
21 to be marketed for commercial purposes. Possession of



1 agricultural commodities without ownership and
2 movement certificates, when a certificate is required
3 pursuant to section 145-22, is prima facie evidence
4 that the products are or have been stolen; provided
5 that "agriculture commodities" has the same meaning as
6 in section 145-21."

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

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

11 (a) Of property or services the value of which exceeds
12 [~~\$100~~] \$250; or

13 (b) Of gasoline, diesel fuel, or other related petroleum
14 products used as propellants of any value not
15 exceeding [~~\$300~~] \$750."

16 SECTION 39. Section 708-833, Hawaii Revised Statutes, is
17 amended by amending subsection (1) to read as follows:

18 "(1) A person commits the offense of theft in the fourth
19 degree if the person commits theft of property or services of
20 any value not in excess of [~~\$100~~] \$250."



1 SECTION 40. Section 708-833.5, Hawaii Revised Statutes, is
2 amended to read as follows:

3 "§708-833.5 Shoplifting. A person convicted of committing
4 ~~[the offense]~~ theft by means of shoplifting as defined in
5 section 708-830 shall be sentenced ~~[as follows:]~~ to the
6 following minimum fines:

7 (1) In cases involving ~~[property the value or aggregate~~
8 ~~value of which exceeds \$300: as]~~ a class C felony,
9 ~~[provided that]~~ the minimum fine shall be four times
10 the value or aggregate value of the property involved;

11 (2) In cases involving ~~[property the value or aggregate~~
12 ~~value of which exceeds \$100: as]~~ a misdemeanor,
13 ~~[provided that]~~ the minimum fine shall be three times
14 the value or aggregate value of the property involved;

15 (3) In cases involving ~~[property the value or aggregate~~
16 ~~value of which is \$100 or less: as]~~ a petty
17 misdemeanor, ~~[provided that]~~ the minimum fine shall be
18 twice the value or aggregate value of the property
19 involved;

20 (4) If a person has previously been convicted of
21 committing ~~[the offense]~~ theft by means of shoplifting



1 as defined in section 708-830, the minimum fine shall
2 be doubled that specified in paragraphs (1), (2), and
3 (3), respectively, as set forth above; provided in the
4 event the convicted person defaults in payment of any
5 fine, and the default was not contumacious, the court
6 may sentence the person to community services as
7 authorized by section [4] 706-605(1) (d) [4]."

8 SECTION 41. Section 708-839.5, Hawaii Revised Statutes, is
9 amended by amending subsection (4) to read as follows:

10 "(4) A person commits the offense of theft of utility
11 services in the first degree in cases where the theft:

12 (a) Accrues to the benefit of any commercial trade or
13 business, including any commercial trade or business
14 operating in a residence, home, or dwelling;

15 (b) Is obtained through the services of a person hired to
16 commit the theft of utility services; in which event,
17 both the person hired and the person responsible for
18 the hiring shall be punished under this section as a
19 class C felony; or



(c) Accrues to the benefit of a residence, home, or dwelling where the value of the theft of utility services exceeds [~~\$300.~~] \$750.

Theft of utility services in the first degree is a class C felony, and shall be sentenced in accordance with chapter 706, except that for a first offense the court shall impose a minimum sentence of a fine of at least \$1,000 or two times the value of the theft, whichever is greater."

SECTION 42. Section 708-893, Hawaii Revised Statutes, is amended by amending subsection (1) to read as follows:

"(1) A person commits the offense of use of a computer in the commission of a separate crime if the person[+]

~~(a) Intentionally uses a computer to obtain control over the property of the victim to commit theft in the first or second degree; or~~

~~(b) Knowingly]~~ knowingly uses a computer to identify, select, solicit, persuade, coerce, entice, induce, procure, pursue, surveil, contact, harass, annoy, or alarm the victim or intended victim of the following offenses:



- 1 ~~[(i)]~~ (a) Section 707-726, relating to custodial
2 interference in the first degree;
- 3 ~~[(ii)]~~ (b) Section 707-727, relating to custodial
4 interference in the second degree;
- 5 ~~[(iii)]~~ (c) Section 707-731, relating to sexual assault in
6 the second degree;
- 7 ~~[(iv)]~~ (d) Section 707-732, relating to sexual assault in
8 the third degree;
- 9 ~~[(v)]~~ (e) Section 707-733, relating to sexual assault in
10 the fourth degree;
- 11 ~~[(vi)]~~ (f) Section 707-751, relating to promoting child
12 abuse in the second degree;
- 13 ~~[(vii)]~~ (g) Section 711-1106, relating to harassment;
- 14 ~~[(viii)]~~ (h) Section 711-1106.5, relating to harassment by
15 stalking; or
- 16 ~~[(ix)]~~ (i) Section 712-1215, relating to promoting
17 pornography for minors."



PART VI

SECTION 43. The purpose of this part is to amend chapter 709, Hawaii Revised Statutes, regarding offenses against the family and against incompetents, to:

- (1) Clarify that, regarding the offense of abuse of family or household members, "family or household members" do not include adult roommates or cohabitants who are, or were, only in an economic or contractual affiliation;
- (2) Distinguish between perpetrators who are younger or older than eighteen with regard to ordering a period of separation following an apparent act of physical abuse;
- (3) Clarify that abuse in the presence of a household member who is less than fourteen years of age applies to abuse that occurs in the presence of that member for purposes of charging the abuser; and
- (4) Provide for moving the prohibition against furnishing tobacco and electronic smoking devices to minors to chapter 712, Hawaii Revised Statutes, regarding offenses against public health and morals, where it more logically would be found, by repealing the



1 prohibition from chapter 709, Hawaii Revised Statutes,
2 regarding offenses against family and against
3 incompetents.

4 SECTION 44. Section 709-906, Hawaii Revised Statutes, is
5 amended as follows:

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

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

14 For the purposes of this section:

15 "Business day" means any calendar day, except Saturday,
16 Sunday, or any state holiday.

17 "Family or household member" ~~[means]~~:

18 (a) Means spouses or reciprocal beneficiaries, former
19 spouses or reciprocal beneficiaries, persons in a
20 dating relationship as defined under section 586-1,
21 persons who have a child in common, parents, children,



1 persons related by consanguinity, and persons jointly
2 residing or formerly residing in the same dwelling
3 unit[-]; and

4 (b) Does not include those who are, or were, adult
5 roommates or cohabitants only by virtue of an economic
6 or contractual affiliation."

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

8 "(4) Any police officer, with or without a warrant, shall
9 take the following course of action, regardless of whether the
10 physical abuse or harm occurred in the officer's presence:

11 (a) The police officer shall make reasonable inquiry of
12 the family or household member upon whom the officer
13 believes physical abuse or harm has been inflicted and
14 other witnesses as there may be;

15 (b) ~~[The police officer lawfully shall order the person]~~
16 If the person who the police officer reasonably
17 believes to have inflicted the abuse is eighteen years
18 of age or older, the police officer lawfully shall
19 order the person to leave the premises for a period of
20 separation, during which time the person shall not
21 initiate any contact, either by telephone or in



1 person, with the family or household member; provided
2 that the person is allowed to enter the premises with
3 police escort to collect any necessary personal
4 effects. The period of separation shall commence when
5 the order is issued and shall expire at 6:00 p.m. on
6 the second business day following the day the order
7 was issued; provided that the day the order is issued
8 shall not be included in the computation of the two
9 business days;

10 (c) If the person who the police officer reasonably
11 believes to have inflicted the abuse is under the age
12 of eighteen, the police officer may order the person
13 to leave the premises for a period of separation,
14 during which time the person shall not initiate any
15 contact with the family or household member by
16 telephone or in person; provided that the person is
17 allowed to enter the premises with police escort to
18 collect any necessary personal effects. The period of
19 separation shall commence when the order is issued and
20 shall expire at 6:00 p.m. on the second business day
21 following the day the order was issued; provided that



1 the day the order is issued shall not be included in
2 the computation of the two business days. The order
3 of separation may be amended at any time by a judge of
4 the family court. In determining whether to order a
5 person under the age of eighteen to leave the
6 premises, the police officer may consider the
7 following factors:

8 (i) Age of the person;

9 (ii) Relationship between the person and the family or
10 household member upon whom the police officer
11 reasonably believes the abuse has been inflicted;
12 and

13 (iii) Ability and willingness of the parent, guardian,
14 or other authorized adult to maintain custody and
15 control over the person;

16 ~~[-e-]~~ (d) All persons who are ordered to leave as stated
17 above shall be given a written warning citation
18 stating the date, time, and location of the warning
19 and stating the penalties for violating the warning.
20 A copy of the warning citation shall be retained by
21 the police officer and attached to a written report



1 which shall be submitted in all cases. A third copy
2 of the warning citation shall be given to the abused
3 person;

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

12 ~~[(e)]~~ (f) The police officer shall seize all firearms and
13 ammunition that the police officer has reasonable
14 grounds to believe were used or threatened to be used
15 in the commission of an offense under this section."

16 3. By amending subsection (9) to read:

17 "(9) Where physical abuse occurs in the presence of ~~[any]~~
18 a minor, as defined in section 706-606.4, and the minor is a
19 family or household member ~~[who is]~~ less than fourteen years of
20 age, abuse of a family or household member is a class C felony."



1 SECTION 45. Section 709-908, Hawaii Revised Statutes, is
2 repealed.

3 ~~["§709-908 Tobacco products and electronic smoking~~
4 ~~devices, persons under twenty-one years of age. (1) Effective~~
5 ~~January 1, 2016, it shall be unlawful to sell or furnish a~~
6 ~~tobacco product in any shape or form or an electronic smoking~~
7 ~~device to a person under twenty one years of age.~~

8 ~~(2) Effective January 1, 2016, signs using the statement,~~
9 ~~"The sale of tobacco products or electronic smoking devices to~~
10 ~~persons under twenty one is prohibited", shall be posted on or~~
11 ~~near any vending machine in letters at least one half inch high~~
12 ~~and at or near the point of sale of any other location where~~
13 ~~tobacco products or electronic smoking devices are sold in~~
14 ~~letters at least one half inch high.~~

15 ~~(3) It shall be unlawful for a person under twenty one~~
16 ~~years of age to purchase any tobacco product or electronic~~
17 ~~smoking device, as those terms are defined in subsection (5).~~
18 ~~This provision does not apply if a person under the age of~~
19 ~~twenty one, with parental authorization, is participating in a~~
20 ~~controlled purchase as part of a law enforcement activity or a~~
21 ~~study authorized by the department of health under the~~



~~1 supervision of law enforcement to determine the level of~~
~~2 incidence of tobacco or electronic smoking devices sales to~~
~~3 persons under twenty one years of age.~~

~~4 (4) Any person who violates subsection (1) or (2), or~~
~~5 both, shall be fined \$500 for the first offense. Any subsequent~~
~~6 offenses shall subject the person to a fine not less than \$500~~
~~7 nor more than \$2,000. Any person under twenty one years of age~~
~~8 who violates subsection (3) shall be fined \$10 for the first~~
~~9 offense. Any subsequent offense shall subject the violator to a~~
~~10 fine of \$50, no part of which shall be suspended, or the person~~
~~11 shall be required to perform not less than forty eight hours nor~~
~~12 more than seventy two hours of community service during hours~~
~~13 when the person is not employed and is not attending school.~~

~~14 (5) For the purposes of this section:~~

~~15 "Electronic smoking device" means any electronic product~~
~~16 that can be used to aerosolize and deliver nicotine or other~~
~~17 substances to the person inhaling from the device, including but~~
~~18 not limited to an electronic cigarette, electronic cigar,~~
~~19 electronic cigarillo, or electronic pipe, and any cartridge or~~
~~20 other component of the device or related product.~~



1 ~~"Tobacco product" means any product made or derived from~~
2 ~~tobacco that contains nicotine or other substances and is~~
3 ~~intended for human consumption or is likely to be consumed,~~
4 ~~whether smoked, heated, chewed, absorbed, dissolved, inhaled, or~~
5 ~~ingested by other means. "Tobacco product" includes but is not~~
6 ~~limited to a cigarette, cigar, pipe tobacco, chewing tobacco,~~
7 ~~snuff, snus, or an electronic smoking device. "Tobacco product"~~
8 ~~does not include drugs, devices, or combination products~~
9 ~~approved for sale by the United States Food and Drug~~
10 ~~Administration, as those terms are defined in the Federal Food,~~
11 ~~Drug, and Cosmetic Act."]~~

12 PART VII

13 SECTION 46. The purpose of this part is to amend chapter
14 710, Hawaii Revised Statutes, regarding offenses against public
15 administration, to:

- 16 (1) Establish the felony offense of resisting an order to
17 stop a motor vehicle in the first degree, applicable
18 when a person both flees from a police officer and
19 does so by driving recklessly or at high speed; and
20 (2) Make the existing misdemeanor offense of resisting an
21 order to stop a motor vehicle a second degree offense



1 involving flight from a police officer without
2 reckless or high speed driving.

3 SECTION 47. Chapter 710, Hawaii Revised Statutes, is
4 amended by adding a new section to be appropriately designated
5 and to read as follows:

6 "§710- Resisting an order to stop a motor vehicle in
7 the first degree. (1) A person commits the offense of
8 resisting an order to stop a motor vehicle in the first degree
9 if the person:

10 (a) Intentionally fails to obey a direction of a law
11 enforcement officer, acting under color of the law
12 enforcement officer's official authority, to stop the
13 person's motor vehicle; and

14 (b) While intentionally fleeing from or attempting to
15 elude a law enforcement officer:

16 (i) Operates the person's motor vehicle in reckless
17 disregard of the safety of other persons; or

18 (ii) Operates the person's motor vehicle in reckless
19 disregard of the risk that the speed of the
20 person's vehicle exceeds:



- 1 (A) The applicable state or county speed limit
2 by thirty miles per hour or more; or
3 (B) Eighty miles per hour or more, irrespective
4 of the applicable state or county speed
5 limit.

6 For purposes of this section, "the applicable state or county
7 speed limit" shall have the same meaning as in section 291C-105.

- 8 (2) Resisting an order to stop a motor vehicle in the
9 first degree is a class C felony."

10 SECTION 48. Section 710-1027, Hawaii Revised Statutes, is
11 amended to read as follows:

12 "§710-1027 Resisting an order to stop a motor vehicle[+]
13 in the second degree. (1) A person commits the offense of
14 resisting an order to stop a motor vehicle in the second degree
15 if the person intentionally fails to obey a direction of a law
16 enforcement officer, acting under color of the law enforcement
17 officer's official authority, to stop the person's vehicle.

18 (2) Resisting an order to stop a motor vehicle in the
19 second degree is a misdemeanor."



1 PART VIII

2 SECTION 49. The purpose of this part is to amend chapter
3 712, Hawaii Revised Statutes, regarding offenses against public
4 health and morals, to:

- 5 (1) Move to this chapter the prohibition against
6 furnishing tobacco and electronic smoking devices to
7 minors that currently is found in chapter 709, Hawaii
8 Revised Statutes, because the offense is more akin to
9 offenses against public health and morals in this
10 chapter than those against the family and against
11 incompetents in chapter 709, Hawaii Revised Statutes;
- 12 (2) Clarify that a person commits the offense of
13 prostitution under section 712-1200(1)(a), Hawaii
14 Revised Statutes, when the person engages in, or
15 agrees or offers to engage in, sexual conduct "in
16 return" for a fee, distinguishing the offense from the
17 offense under section 712-1200(1)(b), Hawaii Revised
18 Statutes, in which the other person pays the fee; and
- 19 (3) Limit the offense of methamphetamine trafficking to
20 instances of manufacturing the drug or distributing it
21 to minors, which merit mandatory prison terms, so that



1 common methamphetamine offenses involving distribution
2 or possession of small amounts may be prosecuted as
3 promotion of dangerous drugs, which gives the
4 sentencing court the discretion to impose probation
5 and drug treatment when appropriate to manage these
6 offenders.

7 SECTION 50. Chapter 712, Hawaii Revised Statutes, is
8 amended by adding a new section to be appropriately designated
9 and to read as follows:

10 "§712- Tobacco products and electronic smoking devices;
11 persons under twenty-one years of age. (1) It shall be
12 unlawful to sell or furnish a tobacco product in any shape or
13 form or an electronic smoking device to a person under twenty-
14 one years of age.

15 (2) Signs using the statement, "The sale of tobacco
16 products or electronic smoking devices to persons under twenty-
17 one is prohibited", shall be posted on or near any vending
18 machine in letters at least one-half inch high and at or near
19 the point of sale of any other location where tobacco products
20 or electronic smoking devices are sold in letters at least one-
21 half inch high.



1 (3) It shall be unlawful for a person under twenty-one
2 years of age to purchase any tobacco product or electronic
3 smoking device, as those terms are defined in subsection (5).
4 This provision does not apply if a person under the age of
5 twenty-one, with parental authorization, is participating in a
6 controlled purchase as part of a law enforcement activity or a
7 study authorized by the department of health under the
8 supervision of law enforcement to determine the level of
9 incidence of tobacco or electronic smoking devices sales to
10 persons under twenty-one years of age.

11 (4) Any person who violates subsection (1) or (2), or
12 both, shall be fined \$500 for the first offense. Any subsequent
13 offenses shall subject the person to a fine not less than \$500
14 nor more than \$2,000. Any person under twenty-one years of age
15 who violates subsection (3) shall be fined \$10 for the first
16 offense. Any subsequent offense shall subject the violator to a
17 fine of \$50, no part of which shall be suspended, or the person
18 shall be required to perform not less than forty-eight hours nor
19 more than seventy-two hours of community service during hours
20 when the person is not employed and is not attending school.

21 (5) For the purposes of this section:



1 "Electronic smoking device" means any electronic product
2 that can be used to aerosolize and deliver nicotine or other
3 substances to the person inhaling from the device, including but
4 not limited to an electronic cigarette, electronic cigar,
5 electronic cigarillo, or electronic pipe, and any cartridge or
6 other component of the device or related product.

7 "Tobacco product" means any product made or derived from
8 tobacco that contains nicotine or other substances and is
9 intended for human consumption or is likely to be consumed,
10 whether smoked, heated, chewed, absorbed, dissolved, inhaled, or
11 ingested by other means. "Tobacco product" includes but is not
12 limited to a cigarette, cigar, pipe tobacco, chewing tobacco,
13 snuff, snus, or an electronic smoking device. "Tobacco product"
14 does not include drugs, devices, or combination products
15 approved for sale by the United States Food and Drug
16 Administration, as those terms are defined in the Federal Food,
17 Drug, and Cosmetic Act."

18 SECTION 51. Section 712-1200, Hawaii Revised Statutes, is
19 amended by amending subsection (1) to read as follows:

20 "(1) A person commits the offense of prostitution if the
21 person:



- 1 (a) Engages in, or agrees or offers to engage in, sexual
2 conduct with another person in return for a fee; or
3 (b) Pays, agrees to pay, or offers to pay a fee to another
4 to engage in sexual conduct."

5 SECTION 52. Section 712-1240.7, Hawaii Revised Statutes,
6 is amended to read as follows:

7 "[~~f~~] §712-1240.7 [~~f~~] Methamphetamine trafficking [~~in the~~
8 ~~first degree~~]. (1) A person commits the offense of
9 methamphetamine trafficking [~~in the first degree~~] if the person
10 knowingly:

11 [~~(a)~~ Possesses one or more preparations, compounds,
12 mixtures, or substances of an aggregate weight of one
13 ounce or more containing methamphetamine or any of its
14 salts, isomers, and salts of isomers,

15 ~~(b)~~ Distributes one or more preparations, compounds,
16 mixtures, or substances of an aggregate weight of
17 one eighth ounce or more containing methamphetamine or
18 any of its salts, isomers, and salts of isomers,

19 ~~(e)]~~ (a) Distributes methamphetamine in any amount to a
20 minor; or

21 [~~(d)]~~ (b) Manufactures methamphetamine in any amount.



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

4 (3) Notwithstanding sections 706-620(2), 706-640, 706-641,
5 706-659, 706-669, and any other law to the contrary, a person
6 convicted of methamphetamine trafficking [~~in the first degree~~]
7 shall be sentenced to an indeterminate term of imprisonment of
8 twenty years with a mandatory minimum term of imprisonment of
9 not less than two years and not greater than eight years and a
10 fine not to exceed \$20,000,000; provided that:

11 (a) If the person has one prior conviction for
12 methamphetamine trafficking pursuant to this section,
13 promoting a dangerous drug in the first degree
14 pursuant to section 712-1241 and methamphetamine was
15 the drug upon which the conviction was predicated, or
16 section 712-1240.8[7] as that section was in effect
17 prior to July 1, 2016, the mandatory minimum term of
18 imprisonment shall be not less than six years, eight
19 months and not greater than thirteen years, four
20 months;



1 (b) If the person has two prior convictions for
2 methamphetamine trafficking pursuant to this section,
3 promoting a dangerous drug in the first degree
4 pursuant to section 712-1241 and methamphetamine was
5 the drug upon which the conviction was predicated, or
6 section 712-1240.8, as that section was in effect
7 prior to July 1, 2016, the mandatory minimum term of
8 imprisonment shall be not less than thirteen years,
9 four months and not greater than twenty years; or

10 (c) If the person has three or more prior convictions for
11 methamphetamine trafficking pursuant to this section,
12 promoting a dangerous drug in the first degree
13 pursuant to section 712-1241 and methamphetamine was
14 the drug upon which the conviction was predicated, or
15 section 712-1240.8[-] as that section was in effect
16 prior to July 1, 2016, the mandatory minimum term of
17 imprisonment shall be twenty years."

18 SECTION 53. Section 712-1240.9, Hawaii Revised Statutes,
19 is amended to read as follows:

20 "[~~f~~]§712-1240.9[~~f~~] Methamphetamine trafficking;
21 restitution and reimbursement. When sentencing a defendant



1 convicted of methamphetamine trafficking pursuant to section
2 712-1240.7 or 712-1240.8[7] as that section was in effect prior
3 to July 1, 2016, the court may order restitution or
4 reimbursement to the State or appropriate county government for
5 the cost incurred for any cleanup associated with the
6 manufacture or distribution of methamphetamine and to any other
7 person injured as a result of the manufacture or distribution of
8 methamphetamine."

9 SECTION 54. Section 712-1241, Hawaii Revised Statutes, is
10 amended by amending subsection (1) to read as follows:

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

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

15 (i) One ounce or more, containing methamphetamine,
16 heroin, morphine, or cocaine or any of their
17 respective salts, isomers, and salts of isomers;
18 or

19 (ii) One and one-half ounce or more, containing one or
20 more of any of the other dangerous drugs [~~except~~
21 ~~methamphetamine~~];



(b) Distributes [~~except for methamphetamine~~]:

(i) Twenty-five or more capsules, tablets, ampules, dosage units, or syrettes containing one or more dangerous drugs; or

(ii) One or more preparations, compounds, mixtures, or substances of an aggregate weight of:

(A) One-eighth ounce or more, containing methamphetamine, heroin, morphine, or cocaine or any of their respective salts, isomers, and salts of isomers; or

(B) Three-eighths ounce or more, containing any other dangerous drug;

(c) Distributes any dangerous drug in any amount to a minor except for methamphetamine; or

(d) Manufactures a dangerous drug in any amount, except for methamphetamine; provided that this subsection shall not apply to any person registered under section 329-32."

SECTION 55. Section 712-1242, 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 second degree if the person knowingly:

(a) Possesses twenty-five or more capsules, tablets, ampules, dosage units, or syrettes, containing one or more dangerous drugs;

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

(i) One-eighth ounce or more, containing methamphetamine, heroin, morphine, or cocaine or any of their respective salts, isomers, and salts of isomers; or

(ii) One-fourth ounce or more, containing any dangerous drug; or

(c) Distributes any dangerous drug in any amount [~~except for methamphetamine~~]."

SECTION 56. Section 712-1240.8, Hawaii Revised Statutes, is repealed.

~~["§712-1240.8] 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.~~



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

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

11 ~~(a) If the person has one prior conviction for~~
12 ~~methamphetamine trafficking pursuant to this section~~
13 ~~or section 712 1240.7, the mandatory minimum term of~~
14 ~~imprisonment shall be not less than three years, four~~
15 ~~months and not greater than six years, eight months,~~

16 ~~(b) If the person has two prior convictions for~~
17 ~~methamphetamine trafficking pursuant to this section~~
18 ~~or section 712 1240.7, the mandatory minimum term of~~
19 ~~imprisonment shall be not less than six years, eight~~
20 ~~months and not greater than ten years; or~~



1 ~~(c) If the person has three or more prior convictions for~~
2 ~~methamphetamine trafficking pursuant to this section~~
3 ~~or section 712-1240.7, the mandatory minimum term of~~
4 ~~imprisonment shall be ten years."]~~

PART IX

6 SECTION 57. The purpose of this part is to amend various
7 provisions of the Hawaii Revised Statutes other than the penal
8 code to:

- 9 (1) Clarify that the offense of inattention to driving
10 involves operating a motor vehicle negligently;
11 (2) Simplify the definition of "alcohol" as used in
12 chapter 291E, Hawaii Revised Statutes;
13 (3) Clarify that the amount deducted from an inmate's
14 individual account for victim restitution pursuant to
15 section 353-22.6, Hawaii Revised Statutes, shall be
16 deducted notwithstanding any contrary law;
17 (4) Amend the definition of "family or household member"
18 as used in chapter 586, Hawaii Revised Statutes, to be
19 consistent with the amendments made to section 709-
20 906, Hawaii Revised Statutes, by this Act;



- 1 (5) Authorize a pretrial officer of the department of
2 public safety's intake service center to invoke the
3 assistance of the court to secure a defendant's
4 appearance before the court when the defendant has
5 intentionally violated the conditions of bail,
6 recognizance, or supervised release;
- 7 (6) Clarify a provision authorizing a court to grant a
8 prosecutor and defense counsel access to records
9 obtained by the adult probation division for the
10 purpose of proceedings pursuant to chapter 704, Hawaii
11 Revised Statutes;
- 12 (7) Reformat for clarity and ease of use an enumerated
13 list of felonies for which criminal charges may be
14 instituted by written information;
- 15 (8) Authorize an offender to request the court to remove
16 from public access all judiciary files and other
17 information related to an expunged offense;
- 18 (9) Provide that chapter 853, Hawaii Revised Statutes,
19 does not apply to certain offenders who previously
20 have been granted a deferred acceptance of no contest
21 plea, to be consistent with treatment of offenders who



1 previously have been granted a deferred acceptance of
2 guilty plea; and

3 (10) Make conforming amendments to other statutes to
4 account for amendment or repeal of various statutes by
5 other parts of this Act.

6 SECTION 58. Section 291-12, Hawaii Revised Statutes, is
7 amended to read as follows:

8 "§291-12 Inattention to driving. Whoever operates any
9 vehicle [~~without due care or in a manner~~] negligently as to
10 cause a collision with, or injury or damage to, as the case may
11 be, any person, vehicle or other property shall be fined not
12 more than \$500 or imprisoned not more than thirty days, or both,
13 and may be subject to a surcharge of up to \$100, which shall be
14 deposited into the trauma system special fund."

15 SECTION 59. Section 291E-1, Hawaii Revised Statutes, is
16 amended by amending the definition of "alcohol" to read as
17 follows:

18 "'Alcohol" means [~~the product of distillation of any~~
19 ~~fermented liquid, regardless of whether rectified, whatever may~~
20 ~~be the origin thereof, and includes ethyl alcohol, lower~~
21 ~~aliphatic alcohol, and phenol as well as synthetic ethyl~~



1 ~~alcohol, but not denatured or other alcohol that is considered~~
2 ~~not potable under the customs laws of the United States.]~~
3 ethanol or any substance containing ethanol."

4 SECTION 60. Section 353-10.5, Hawaii Revised Statutes, is
5 amended by amending subsection (d) to read as follows:

6 "(d) As used in this section, "alternative programs" mean
7 programs ~~[which, from time to time,]~~ that are created and funded
8 by legislative appropriation or federal grant naming the
9 department of public safety or one of its operating agencies as
10 the expending agency and ~~[which]~~ that are intended to provide an
11 alternative to incarceration. Alternative programs may include:

12 (1) Home detention, curfew using electronic monitoring and
13 surveillance, or both;

14 (2) Supervised release, graduated release, furlough, and
15 structured educational or vocational programs;

16 ~~[-(3)- A program of regimental discipline pursuant to section~~
17 ~~706-605.5,] and~~

18 ~~[-(4)-]~~ (3) Similar programs created and designated as
19 alternative programs by the legislature or the
20 director of public safety for inmates who do not pose
21 significant risks to the community."



1 SECTION 61. Section 353-22.6, Hawaii Revised Statutes, is
2 amended to read as follows:

3 "§353-22.6 Victim restitution. The director of public
4 safety shall enforce victim restitution orders against all
5 moneys earned by the inmate or deposited or credited to the
6 inmate's individual account while incarcerated. [The]
7 Notwithstanding any law or order to the contrary, the amount
8 deducted shall be twenty-five per cent of the total of all
9 moneys earned, new deposits, and credits to the inmate's
10 individual account. The moneys intended for victim restitution
11 shall be deducted monthly and paid to the victim once the amount
12 reaches \$25, or annually, whichever is sooner. This section
13 shall not apply to moneys earned on work furlough pursuant to
14 section 353-17."

15 SECTION 62. Section 586-1, Hawaii Revised Statutes, is
16 amended by amending the definition of "family or household
17 member" to read as follows:

18 "Family or household member" [means]:

19 (1) Means spouses or reciprocal beneficiaries, former
20 spouses or former reciprocal beneficiaries, persons
21 who have a child in common, parents, children, persons



1 related by consanguinity, persons jointly residing or
2 formerly residing in the same dwelling unit, and
3 persons who have or have had a dating relationship[-];
4 and

5 (2) Does not include those who are, or were, adult
6 roommates or cohabitants only by virtue of an economic
7 or contractual affiliation."

8 SECTION 63. Section 804-7.2, Hawaii Revised Statutes, is
9 amended to read as follows:

10 "§804-7.2 Violations of conditions of release on bail,
11 recognizance, or supervised release. (a) Upon verified
12 application by the prosecuting attorney alleging that a
13 defendant has intentionally violated the conditions of release
14 on bail, recognizance, or supervised release, the judicial
15 officer named in section 804-5 shall issue a warrant directing
16 the defendant be arrested and taken forthwith before the court
17 [-]of[+] record for hearing.

18 (b) Upon verified application by a pretrial officer of the
19 intake service center that a defendant has intentionally
20 violated the conditions of release on bail, recognizance, or
21 supervised release, the court may issue an order pertaining to



1 bail to secure the defendant's appearance before the court or a
2 warrant directing that the defendant be arrested and taken
3 forthwith before the court of record for hearing.

4 (c) A law enforcement officer having reasonable grounds to
5 believe that a released felony defendant has violated the
6 conditions of release on bail, recognizance, or supervised
7 release, may, where it would be impracticable to secure a
8 warrant, arrest the defendant and take the defendant forthwith
9 before the court of record."

10 SECTION 64. Section 806-73, Hawaii Revised Statutes, is
11 amended by amending subsection (b) to read as follows:

12 "(b) All adult probation records shall be confidential and
13 shall not be deemed to be public records. As used in this
14 section, the term "records" includes but is not limited to all
15 records made by any adult probation officer in the course of
16 performing the probation officer's official duties. The
17 records, or the content of the records, shall be divulged only
18 as follows:

19 (1) A copy of any adult probation case record or of a
20 portion of it, or the case record itself, upon
21 request, may be provided to:



1 (A) An adult probation officer, court officer, social
2 worker of a Hawaii state adult probation unit, or
3 a family court officer who is preparing a report
4 for the courts; or

5 (B) A state or federal criminal justice agency, or
6 state or federal court program that:

7 (i) Is providing supervision of a defendant or
8 offender convicted and sentenced by the
9 courts of Hawaii; or

10 (ii) Is responsible for the preparation of a
11 report for a court;

12 (2) The residence address, work address, home telephone
13 number, or work telephone number of a current or
14 former defendant shall be provided only to:

15 (A) A law enforcement officer as defined in section
16 [710-1000] to locate the probationer for the
17 purpose of serving a summons or bench warrant in
18 a civil, criminal, or deportation hearing, or for
19 the purpose of a criminal investigation; or

20 (B) A collection agency or licensed attorney
21 contracted by the judiciary to collect any



1 delinquent court-ordered penalties, fines,
2 restitution, sanctions, and court costs pursuant
3 to section 601-17.5;

4 (3) A copy of a presentence report or investigative report
5 shall be provided only to:

6 (A) The persons or entities named in section 706-604;

7 (B) The Hawaii paroling authority;

8 (C) Any psychiatrist, psychologist, or other
9 treatment practitioner who is treating the
10 defendant pursuant to a court order or parole
11 order for that treatment;

12 (D) The intake service centers;

13 (E) In accordance with applicable law, persons or
14 entities doing research; and

15 (F) Any Hawaii state adult probation officer or adult
16 probation officer of another state or federal
17 jurisdiction who:

18 (i) Is engaged in the supervision of a defendant
19 or offender convicted and sentenced in the
20 courts of Hawaii; or



1 (ii) Is engaged in the preparation of a report
2 for a court regarding a defendant or
3 offender convicted and sentenced in the
4 courts of Hawaii;

5 (4) Access to adult probation records by a victim, as
6 defined in section 706-646 to enforce an order filed
7 pursuant to section 706-647, shall be limited to the
8 name and contact information of the defendant's adult
9 probation officer;

10 (5) Upon written request, the victim, or the parent or
11 guardian of a minor victim or incapacitated victim, of
12 a defendant who has been placed on probation for an
13 offense under section 580-10(d)(1), 586-4(e), 586-
14 11(a), or 709-906 may be notified by the defendant's
15 probation officer when the probation officer has any
16 information relating to the safety and welfare of the
17 victim;

18 (6) Notwithstanding paragraph (3) and upon notice to the
19 defendant, records and information relating to the
20 defendant's risk assessment and need for treatment
21 services; information related to the defendant's past



1 treatment and assessments, with the prior written
2 consent of the defendant for information from a
3 treatment service provider; provided that for any
4 substance abuse records such release shall be subject
5 to title 42 Code of Federal Regulations part 2,
6 relating to the confidentiality of alcohol and drug
7 abuse patient records; and information that has
8 therapeutic or rehabilitative benefit, may be provided
9 to:

10 (A) A case management, assessment, or treatment
11 service provider assigned by adult probation to
12 service the defendant; provided that the
13 information shall be given only upon the
14 screening for admission, acceptance, or
15 admittance of the defendant into a program;

16 (B) Correctional case manager, correctional unit
17 manager, and parole officers involved with the
18 defendant's treatment or supervision; and

19 (C) In accordance with applicable law, persons or
20 entities doing research;



(7) Probation drug test results may be released with prior written consent of a defendant to the defendant's treating physician when test results indicate substance use which may be compromising the defendant's medical care or treatment;

(8) Records obtained pursuant to section 704-404(8) may be made available as provided in that section;

~~[(8)]~~ (9) Any person, agency, or entity receiving records, or contents of records, pursuant to this subsection shall be subject to the same restrictions on disclosure of the records as Hawaii state adult probation offices; and

~~[(9)]~~ (10) Any person who uses the information covered by this subsection for purposes inconsistent with the intent of this subsection or outside of the scope of the person's official duties shall be fined no more than \$500."

SECTION 65. Section 806-83, Hawaii Revised Statutes, is amended by amending subsections (a) to (c) to read as follows:



1 "(a) Criminal charges may be instituted by written
2 information for a felony when the charge is a class C felony
3 under ~~[section]~~:

4 (1) Section 19-3.5 (voter fraud); ~~[section]~~

5 (2) Section 128D-10 (knowing releases); ~~[section]~~

6 (3) Section 132D-14(a)(1), (2)(A), and (3) (relating to
7 penalties for failure to comply with requirements of
8 sections 132D-7, 132D-10, and 132D-16); ~~[section]~~

9 (4) Section 134-7(a) and (b) (ownership or possession
10 prohibited); ~~[section]~~

11 (5) Section 134-8 (ownership, etc., of automatic firearms,
12 silencers, etc., prohibited; penalties); ~~[section]~~

13 (6) Section 134-9 (licenses to carry); ~~[section]~~

14 (7) Section 134-17(a) (relating to false information or
15 evidence concerning psychiatric or criminal history);
16 ~~[section]~~

17 (8) Section 134-24 (place to keep unloaded firearms other
18 than pistols and revolvers); ~~[section]~~

19 (9) Section 134-51 (deadly weapons); ~~[section]~~

20 (10) Section 134-52 (switchblade knives); ~~[section]~~

21 (11) Section 134-53 (butterfly knives); ~~[section]~~



- 1 (12) Section 188-23 (possession or use of explosives,
2 electrofishing devices, and poisonous substances in
3 state waters prohibited); [~~section~~]
- 4 (13) Section 231-34 (attempt to evade or defeat tax);
5 [~~section~~]
- 6 (14) Section 231-36 (false and fraudulent statements);
7 [~~section~~]
- 8 (15) Section 245-37 (sale or purchase of packages of
9 cigarettes without stamps); [~~section~~]
- 10 (16) Section 245-38 (vending unstamped cigarettes);
11 [~~section~~]
- 12 (17) Section 245-51 (export and foreign cigarettes
13 prohibited); [~~section~~]
- 14 (18) Section 245-52 (alteration of packaging prohibited);
15 [~~section~~]
- 16 (19) Section 291C-12.5 (accidents involving substantial
17 bodily injury); [~~section~~]
- 18 (20) Section 291E-61.5 (habitually operating a vehicle
19 under the influence of an intoxicant); [~~section~~]
- 20 (21) Section 329-41 (prohibited acts B--penalties);
21 [~~section~~]



- 1 (22) Section 329-42 (prohibited acts C--penalties);
2 [~~section~~]
- 3 (23) Section 329-43.5 (prohibited acts related to drug
4 paraphernalia); [~~section~~]
- 5 (24) Section 329C-2 (manufacture, distribution, or
6 possession with intent to distribute an imitation
7 controlled substance to a person under eighteen years
8 of age); [~~section~~]
- 9 (25) Section 346-34(d)(2) and (e) (relating to fraud
10 involving food stamps or coupons); [~~section~~]
- 11 (26) Section 346-43.5 (medical assistance frauds;
12 penalties); [~~section~~]
- 13 (27) Section 383-141 (falsely obtaining benefits, etc.);
14 [~~section~~]
- 15 (28) Section 431:2-403(b)(2) (insurance fraud); [~~section~~]
- 16 (29) Section 482D-7 (violation of fineness standards and
17 stamping requirements); [~~section~~]
- 18 (30) Section 485A-301 (securities registration
19 requirement); [~~section~~]
- 20 (31) Section 485A-401 (broker-dealer registration
21 requirement and exemptions); [~~section~~]



- 1 (32) Section 485A-402 (agent registration requirement and
2 exemptions); [~~section~~]
- 3 (33) Section 485A-403 (investment adviser registration
4 requirement and exemptions); [~~section~~]
- 5 (34) Section 485A-404 (investment adviser representative
6 registration requirement and exemptions); [~~section~~]
- 7 (35) Section 485A-405 (federal covered investment adviser
8 notice filing requirement); [~~section~~]
- 9 (36) Section 485A-501 (general fraud); [~~section~~]
- 10 (37) Section 485A-502 (prohibited conduct in providing
11 investment advice); [~~section~~]
- 12 (38) Section 707-703 (negligent homicide in the second
13 degree); [~~section~~]
- 14 (39) Section 707-705 (negligent injury in the first
15 degree); [~~section~~]
- 16 (40) Section 707-711 (assault in the second degree);
17 [~~section~~]
- 18 (41) Section 707-713 (reckless endangering in the first
19 degree); [~~section~~]
- 20 (42) Section 707-721 (unlawful imprisonment in the first
21 degree); [~~section~~]



(43) Section 707-726 (custodial interference in the first degree); [section]

(44) Section 707-757 (electronic enticement of a child in the second degree); [section]

(45) Section 707-766 (extortion in the second degree); [section]

(46) Section 708-811 (burglary in the second degree); [section]

(47) Section 708-812.6 (unauthorized entry in a dwelling in the second degree); [section]

(48) Section 708-821 (criminal property damage in the second degree); [section]

(49) Section 708-831 (theft in the second degree); [section]

(50) Section 708-833.5 (shoplifting); [section]

(51) Section 708-835.5 (theft of livestock); [section]

(52) Section 708-836 (unauthorized control of propelled vehicle); [section]

(53) Section 708-836.5 (unauthorized entry into motor vehicle in the first degree); [section]



- 1 (54) Section 708-839.5 (theft of utility services);
2 [~~section~~]
- 3 (55) Section 708-839.55 (unauthorized possession of
4 confidential personal information); [~~section~~]
- 5 (56) Section 708-839.8 (identity theft in the third
6 degree); [~~section~~]
- 7 (57) Section 708-852 (forgery in the second degree);
8 [~~section~~]
- 9 (58) Section 708-854 (criminal possession of a forgery
10 device); [~~section~~]
- 11 (59) Section 708-858 (suppressing a testamentary or
12 recordable instrument); [~~section~~]
- 13 (60) Section 708-875 (trademark counterfeiting); [~~section~~]
- 14 (61) Section 708-891.6 (computer fraud in the third
15 degree); [~~section~~]
- 16 (62) Section 708-892.6 (computer damage in the third
17 degree); [~~section~~]
- 18 (63) Section 708-895.7 (unauthorized computer access in the
19 third degree); [~~section~~]
- 20 (64) Section 708-8100 (fraudulent use of a credit card);
21 [~~section~~]



- 1 (65) Section 708-8102 (theft, forgery, etc., of credit
2 cards); [~~section~~]
- 3 (66) Section 708-8103 (credit card fraud by a provider of
4 goods or services); [~~section~~]
- 5 (67) Section 708-8104 (possession of unauthorized credit
6 card machinery or incomplete cards); [~~section~~]
- 7 (68) Section 708-8200 (cable television service fraud in
8 the first degree); [~~section~~]
- 9 (69) Section 708-8202 (telecommunication service fraud in
10 the first degree); [~~section~~]
- 11 (70) Section 709-903.5 (endangering the welfare of a minor
12 in the first degree); [~~section~~]
- 13 (71) Section 709-906 (abuse of family or household
14 members); [~~section~~]
- 15 (72) Section 710-1016.3 (obtaining a government-issued
16 identification document under false pretenses in the
17 first degree); [~~section~~]
- 18 (73) Section 710-1016.6 (impersonating a law enforcement
19 officer in the first degree); [~~section~~]
- 20 (74) Section 710-1017.5 (sale or manufacture of deceptive
21 identification document); [~~section~~]



- 1 (75) Section 710-1018 (securing the proceeds of an
2 offense); [~~section~~]
- 3 (76) Section 710-1021 (escape in the second degree);
4 [~~section~~]
- 5 (77) Section 710-1023 (promoting prison contraband in the
6 second degree); [~~section~~]
- 7 (78) Section 710-1024 (bail jumping in the first degree);
8 [~~section~~]
- 9 (79) Section 710-1029 (hindering prosecution in the first
10 degree); [~~section~~]
- 11 (80) Section 710-1060 (perjury); [~~section~~]
- 12 (81) Section 710-1072.5 (obstruction of justice); [~~section~~]
- 13 (82) Section 711-1103 (riot); [~~section~~]
- 14 (83) Section 711-1109.35 (cruelty to animals by fighting
15 dogs in the second degree); [~~section~~]
- 16 (84) Section 711-1110.9 (violation of privacy in the first
17 degree); [~~section~~]
- 18 (85) Section 711-1112 (interference with the operator of a
19 public transit vehicle); [~~section~~]
- 20 (86) Section 712-1221 (promoting gambling in the first
21 degree); [~~section~~]



- 1 (87) Section 712-1222.5 (promoting gambling aboard ships);
2 [~~section~~]
- 3 (88) Section 712-1224 (possession of gambling records in
4 the first degree); [~~section~~]
- 5 (89) Section 712-1243 (promoting a dangerous drug in the
6 third degree); [~~section~~]
- 7 (90) Section 712-1246 (promoting a harmful drug in the
8 third degree); [~~section~~]
- 9 (91) Section 712-1247 (promoting a detrimental drug in the
10 first degree); [~~section~~]
- 11 (92) Section 712-1249.6(1)(a), (b), or (c) (promoting a
12 controlled substance in, on, or near schools, school
13 vehicles, public parks, or public housing projects or
14 complexes); [~~section~~]
- 15 (93) Section 803-42 (interception, access, and disclosure
16 of wire, oral, or electronic communications, use of
17 pen register, trap and trace device, and mobile
18 tracking device prohibited); or [~~section~~]
- 19 (94) Section 846E-9 (failure to comply with covered
20 offender registration requirements).



1 (b) Criminal charges may be instituted by written
2 information for a felony when the charge is a class B felony
3 under [section]:

4 (1) Section 134-7(b) (ownership or possession prohibited,
5 when; penalty); [section]

6 (2) Section 134-23 (place to keep loaded firearms other
7 than pistols and revolvers; penalties); [section]

8 (3) Section 134-25 (place to keep pistol or revolver;
9 penalty); [section]

10 (4) Section 134-26 (carrying or possessing a loaded
11 firearm on a public highway; penalty); [section]

12 (5) Section 329-43.5 (prohibited acts related to drug
13 paraphernalia); [section]

14 (6) Section 708-810 (burglary in the first degree);
15 [section]

16 (7) Section 708-830.5 (theft in the first degree);
17 [section]

18 (8) Section 708-839.7 (identity theft in the second
19 degree); [section]

20 (9) Section 708-851 (forgery in the first degree);
21 [section]



- 1 (10) Section 708-891.5 (computer fraud in the second
2 degree); [~~section~~]
- 3 (11) Section 708-892.5 (computer damage in the second
4 degree); [~~section 712-1240.8 (methamphetamine~~
5 ~~trafficking in the second degree); section~~]
- 6 (12) Section 712-1242 (promoting a dangerous drug in the
7 second degree); [~~section~~]
- 8 (13) Section 712-1245 (promoting a harmful drug in the
9 second degree); or [~~section~~]
- 10 (14) Section 712-1249.5 (commercial promotion of marijuana
11 in the second degree).

12 (c) Criminal charges may be instituted by written
13 information for a felony when the charge is a felony under
14 [~~section~~]:

- 15 (1) Section 19-3 (election frauds); [~~section~~]
- 16 (2) Section 480-4 (combinations in restraint of trade,
17 price-fixing and limitation of production prohibited);
18 [~~section~~]
- 19 (3) Section 480-6 (refusal to deal); or [~~section~~]
- 20 (4) Section 480-9 (monopolization)."



1 SECTION 66. Section 831-3.2, Hawaii Revised Statutes, is
2 amended to read as follows:

3 "§831-3.2 Expungement orders. (a) The attorney general,
4 or the attorney general's duly authorized representative within
5 the department of the attorney general, upon written application
6 from a person arrested for, or charged with but not convicted of
7 a crime, shall issue an expungement order annulling, canceling,
8 and rescinding the record of arrest; provided that an
9 expungement order shall not be issued:

10 (1) In the case of an arrest for a felony or misdemeanor
11 where conviction has not been obtained because of bail
12 forfeiture;

13 (2) For a period of five years after arrest or citation in
14 the case of a petty misdemeanor or violation where
15 conviction has not been obtained because of a bail
16 forfeiture;

17 (3) In the case of an arrest of any person for any offense
18 where conviction has not been obtained because the
19 person has rendered prosecution impossible by
20 absenting oneself from the jurisdiction;



- 1 (4) In the case of a person acquitted by reason of a
2 mental or physical defect under chapter 704; and
3 (5) For a period of one year upon discharge of the
4 defendant and dismissal of the charge against the
5 defendant in the case of a deferred acceptance of
6 guilty plea or nolo contendere plea, in accordance
7 with chapter 853.

8 Any person entitled to an expungement order hereunder may
9 by written application also request return of all fingerprints
10 or photographs taken in connection with the person's arrest.
11 The attorney general or the attorney general's duly authorized
12 representative within the department of the attorney general,
13 within 120 days after receipt of the written application, shall,
14 when so requested, deliver, or cause to be delivered, all
15 fingerprints or photographs of the person, unless the person has
16 a record of conviction or is a fugitive from justice, in which
17 case the photographs or fingerprints may be retained by the
18 agencies holding such records.

19 (b) Upon the issuance of the expungement certificate, the
20 person applying for the order shall be treated as not having



1 been arrested in all respects not otherwise provided for in this
2 section.

3 (c) Upon the issuance of the expungement order, all arrest
4 records pertaining to the arrest [~~which~~] that are in the custody
5 or control of any law enforcement agency of the state or any
6 county government, and [~~which~~] that are capable of being
7 forwarded to the attorney general without affecting other
8 records not pertaining to the arrest, shall be so forwarded for
9 placement of the arrest records in a confidential file.

10 (d) Records filed under subsection (c) shall not be
11 divulged except upon inquiry by:

12 (1) A court of law or an agency thereof which is preparing
13 a presentence investigation for the court;

14 (2) An agency of the federal or state government which is
15 considering the subject person for a position
16 immediately and directly affecting the national or
17 state security; or

18 (3) A law enforcement agency acting within the scope of
19 their duties.

20 Response to any other inquiry shall not be different from
21 responses made about persons who have no arrest records.



1 (e) The attorney general or the attorney general's duly
2 authorized representative within the department of the attorney
3 general shall issue to the person for whom an expungement order
4 has been entered, a certificate stating that the order has been
5 issued and that its effect is to annul the record of a specific
6 arrest. The certificate shall authorize the person to state, in
7 response to any question or inquiry, whether or not under oath,
8 that the person has no record regarding the specific arrest.
9 Such a statement shall not make the person subject to any action
10 for perjury, civil suit, discharge from employment, or any other
11 adverse action.

12 (f) Any person for whom an expungement order has been
13 entered may request in writing that the court seal or otherwise
14 remove all judiciary files and other information pertaining to
15 the applicable arrest or case from the judiciary's publicly
16 accessible electronic databases. The court shall make good
17 faith diligent efforts to seal or otherwise remove the
18 applicable files and information within a reasonable time.

19 ~~[-(f)-]~~ (g) The meaning of the following terms as used in
20 this section shall be as indicated:



1 "Arrest record" means any existing photographic and
2 fingerprint cards relating to the arrest.

3 "Conviction" means a final determination of guilt whether
4 by plea of the accused in open court, by verdict of the jury or
5 by decision of the court.

6 ~~[-(g)]~~ (h) The attorney general shall adopt rules pursuant
7 to chapter 91 necessary for the purpose of this section.

8 ~~[-(h)]~~ (i) Nothing in this section shall affect the
9 compilation of crime statistics or information stored or
10 disseminated as provided in chapter 846."

11 SECTION 67. Section 846F-3, Hawaii Revised Statutes, is
12 amended by amending subsection (b) to read as follows:

13 "(b) When a defendant is also ordered to pay a fine, make
14 restitution, pay a crime victim compensation fee, or pay other
15 fees in addition to the internet crimes against children fee,
16 payments by the defendant shall be made in the order of priority
17 established under section ~~[706-648.]~~ 706- ."

18 SECTION 68. Section 853-4, Hawaii Revised Statutes, is
19 amended by amending subsection (a) to read as follows:

20 "(a) This chapter shall not apply when:



(1) The offense charged involves the intentional, knowing, reckless, or negligent killing of another person;

(2) The offense charged is:

(A) A felony that involves the intentional, knowing, or reckless bodily injury, substantial bodily injury, or serious bodily injury of another person; or

(B) A misdemeanor or petty misdemeanor that carries a mandatory minimum sentence and that involves the intentional, knowing, or reckless bodily injury, substantial bodily injury, or serious bodily injury of another person;

(3) The offense charged involves a conspiracy or solicitation to intentionally, knowingly, or recklessly kill another person or to cause serious bodily injury to another person;

(4) The offense charged is a class A felony;

(5) The offense charged is nonprobationable;

(6) The defendant has been convicted of any offense defined as a felony by the Hawaii Penal Code or has



- 1 been convicted for any conduct that if perpetrated in
2 this State would be punishable as a felony;
- 3 (7) The defendant is found to be a law violator or
4 delinquent child for the commission of any offense
5 defined as a felony by the Hawaii Penal Code or for
6 any conduct that if perpetrated in this State would
7 constitute a felony;
- 8 (8) The defendant has a prior conviction for a felony
9 committed in any state, federal, or foreign
10 jurisdiction;
- 11 (9) A firearm was used in the commission of the offense
12 charged;
- 13 (10) The defendant is charged with the distribution of a
14 dangerous, harmful, or detrimental drug to a minor;
- 15 (11) The defendant has been charged with a felony offense
16 and has been previously granted deferred acceptance of
17 guilty plea ~~[status]~~ or no contest plea for a prior
18 offense, regardless of whether the period of deferral
19 has already expired;
- 20 (12) The defendant has been charged with a misdemeanor
21 offense and has been previously granted deferred



- 1 acceptance of guilty plea [~~status~~] or no contest plea
2 for a prior felony, misdemeanor, or petty misdemeanor
3 for which the period of deferral has not yet expired;
- 4 (13) The offense charged is:
- 5 (A) Escape in the first degree;
 - 6 (B) Escape in the second degree;
 - 7 (C) Promoting prison contraband in the first degree;
 - 8 (D) Promoting prison contraband in the second degree;
 - 9 (E) Bail jumping in the first degree;
 - 10 (F) Bail jumping in the second degree;
 - 11 (G) Bribery;
 - 12 (H) Bribery of or by a witness;
 - 13 (I) Intimidating a witness;
 - 14 (J) Bribery of or by a juror;
 - 15 (K) Intimidating a juror;
 - 16 (L) Jury tampering;
 - 17 (M) Promoting prostitution in the second degree;
 - 18 (N) Abuse of family or household member;
 - 19 (O) Sexual assault in the second degree;
 - 20 (P) Sexual assault in the third degree;



- 1 (Q) A violation of an order issued pursuant to
2 chapter 586;
- 3 (R) Promoting child abuse in the second degree;
- 4 (S) Promoting child abuse in the third degree;
- 5 (T) Electronic enticement of a child in the first
6 degree;
- 7 (U) Electronic enticement of a child in the second
8 degree;
- 9 (V) Prostitution pursuant to section 712-1200(1)(b);
- 10 (W) Street solicitation of prostitution under section
11 712-1207(1)(b);
- 12 (X) Solicitation of prostitution near schools or
13 public parks under section 712-1209;
- 14 (Y) Habitual solicitation of prostitution under
15 section 712-1209.5; or
- 16 (Z) Solicitation of a minor for prostitution under
17 section 712-1209.1;
- 18 (14) The defendant has been charged with:
- 19 (A) Knowingly or intentionally falsifying any report
20 required under chapter 11, part XIII with the



1 intent to circumvent the law or deceive the

2 campaign spending commission; or

3 (B) Violating section 11-352 or 11-353; or

4 (15) The defendant holds a commercial driver's license and
5 has been charged with violating a traffic control law,
6 other than a parking law, in connection with the
7 operation of any type of motor vehicle."

8 PART X

9 SECTION 69. Act 139, Session Laws of Hawaii 2012, as
10 amended by section 2 of Act 67, Session Laws of Hawaii 2013, is
11 amended by amending section 14 to read as follows:

12 "SECTION 14. This Act shall take effect on July 1, 2012;
13 provided that:

14 (1) Section 3 shall take effect on January 1, 2013;

15 (2) Section 7 shall take effect on July 1, 2012, for any
16 individual on parole supervision on or after July 1,
17 2012;

18 (3) Section 8 shall take effect on July 1, 2012, and shall
19 be applicable to individuals committing an offense on
20 or after that date; and



1 (4) Sections 3, 7, 8, [~~10,~~] and 11 shall be repealed on
2 July 1, 2018, and sections 353-10, 353-66, 706-670(1),
3 [~~353-22.6,~~] and 353-69, Hawaii Revised Statutes, shall
4 be reenacted in the form [~~en~~] in which they read on
5 June 30, 2012."

6 SECTION 70. This Act does not affect rights and duties
7 that matured, penalties that were incurred, and proceedings that
8 were begun before its effective date; provided that sections 54,
9 55, and 56 shall apply to offenses committed before the
10 effective date of this Act:

11 (1) But not yet charged as of its effective date;

12 (2) Originally charged as a violation of section 712-
13 1240.7 or 712-1240.8, Hawaii Revised Statutes, where
14 the defendant:

15 (a) Has not yet been placed in jeopardy or convicted
16 on a plea or verdict; and

17 (b) Waives any claim of denial of speedy trial rights
18 for the period elapsing between the date of
19 filing of the original charge and the date of
20 filing of the new charge under this Act;



(3) Originally charged as a violation of section 712-1240.7 or 712-1240.8, Hawaii Revised Statutes, for which the defendant has been convicted on a plea or verdict, but not yet sentenced, in which case the defendant shall be sentenced pursuant to this Act; and

(4) Originally charged as a violation of section 712-1240.7 or 712-1240.8, Hawaii Revised Statutes, for which the defendant has been convicted on a plea or verdict and sentenced but for which no final judgment on appeal has been entered, in which case the appellate court shall either:

(a) Remand the case for sentencing pursuant to this Act if the judgment is affirmed on appeal or if the sentence is vacated; or

(b) Remand the case for further proceedings pursuant to this Act if the judgment is reversed and remanded for further proceedings.

SECTION 71. Statutory material to be repealed is bracketed and stricken. New statutory material is underscored.

SECTION 72. This Act shall take effect on July 1, 2016; provided that:



- 1 (1) Sections 5, 9, and 12 shall take effect on July 1,
2 2018; and
- 3 (2) Section 64 shall take effect on June 30, 2016 and the
4 amendments made to section 806-73(b), Hawaii Revised
5 Statutes, in section 64 of this Act shall not be
6 repealed when section 806-73(b), Hawaii Revised
7 Statutes, is repealed and reenacted on July 1, 2016,
8 pursuant to Act 119, Session Laws of Hawaii 2011.

APPROVED this day of , 2016

GOVERNOR OF THE STATE OF HAWAII

