
A BILL FOR AN ACT

RELATING TO THE ADMINISTRATION OF JUSTICE.

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

1 PART I

2 SECTION 1. The legislature finds that Act 245, Sessions
3 Law of Hawaii 2024, requested the judicial council to appoint an
4 advisory committee to review and recommend revisions to the
5 Hawaii Penal Code. In particular, the requested review was to
6 ensure:

7 (1) That the Hawaii Penal Code is consistent and
8 proportional across the various types and classes of
9 offenses;

10 (2) That the Hawaii Penal Code is aligned with national
11 best practices and based upon evidence-based
12 strategies;

13 (3) That grades and punishment are appropriate and
14 proportionate to other sentences imposed for criminal
15 or civil offenses and are cost-effective in deterring
16 crime, reducing recidivism, and providing restitution
17 to victims in a manner that provides equal justice and



1 punishment regardless of socioeconomic class or
2 ethnicity;

3 (4) That the response of the criminal justice system to
4 mentally ill offenders is appropriate to the
5 situation; and

6 (5) The continued force, effectiveness, and enforcement of
7 the Hawaii Penal Code.

8 Accordingly, the judicial council convened an advisory
9 committee on penal code review comprising sixty-one members,
10 including sixteen judges representing all courts and all four
11 judicial circuits; the chair of the senate committee on
12 judiciary; the chair of the house judiciary and Hawaiian affairs
13 committee; a representative from the department of the attorney
14 general; the director of the department of corrections and
15 rehabilitation; a representative from the department of health;
16 prosecuting attorneys or their representatives for all four
17 counties; the public defender; representatives from Honolulu and
18 Maui police departments; a representative of the office of
19 Hawaiian affairs; a member of the judicial council;
20 representatives of the criminal defense bar; crime victim
21 advocates; and community advocates.



1 thereto, or if persons convicted thereof may be sentenced to
2 imprisonment for a term which is in excess of one year."

3 SECTION 4. Section 701-108, Hawaii Revised Statutes, is
4 amended by amending subsection (2) to read as follows:

5 "(2) Except as otherwise provided in this section,
6 prosecutions for other offenses are subject to the following
7 periods of limitation:

- 8 (a) A prosecution for manslaughter where the death was not
9 caused by the operation of a motor vehicle must be
10 commenced within ten years after it is committed;
- 11 (b) A prosecution for a class A felony must be commenced
12 within six years after it is committed;
- 13 (c) A prosecution for any felony under part IX of
14 chapter 708 must be commenced within five years after
15 it is committed;
- 16 (d) A prosecution for any other felony must be commenced
17 within three years after it is committed;
- 18 (e) A prosecution for a misdemeanor [~~or parking violation~~]
19 must be commenced within two years after it is
20 committed; and



1 (f) A prosecution for a petty misdemeanor or a violation
2 [~~other than~~], including a parking violation, must be
3 commenced within one year after it is committed."

4 SECTION 5. Section 701-116, Hawaii Revised Statutes, is
5 amended to read as follows:

6 "**S701-116 Proving applicability of the Code.** When the
7 application of the Code depends on the finding of a fact [~~which~~]
8 that is not required to be found beyond a reasonable doubt:

9 (1) The burden of proving the fact [~~is~~] shall be on the
10 prosecution or defendant, depending on whose interest
11 or contention will be furthered if the finding should
12 be made; and

13 (2) [~~The~~] Unless there is any authority to the contrary,
14 the fact [~~must~~] shall be proved by a preponderance of
15 the evidence."

16 PART III

17 SECTION 6. The purpose of this part is to amend
18 chapter 705, Hawaii Revised Statutes, regarding inchoate crimes.

19 SECTION 7. Section 705-501, Hawaii Revised Statutes, is
20 amended to read as follows:



1 "§705-501 Criminal attempt; attempting to aid another.

2 (1) A person who engages in conduct intended to aid another to
3 commit a crime is guilty of an attempt to commit the crime,
4 although the crime is not committed or attempted by the other
5 person, provided [~~his~~] the person's conduct would establish
6 [~~his~~] the person's complicity under sections 702-222 through
7 702-226 if the crime were committed or attempted by the other
8 person.

9 (2) It [~~is~~] shall not be a defense to a prosecution under
10 this section that under the circumstances it was impossible for
11 the defendant to aid the other person in the commission of the
12 offense, provided [~~he~~] the person could have done so had the
13 circumstances been as [~~he~~] the person believed them to be."

14 SECTION 8. Section 705-511, Hawaii Revised Statutes, is
15 amended by amending subsections (1) and (2) to read as follows:

16 "(1) A person shall not be liable under section 705-510
17 for criminal solicitation of another if under sections
18 702-224(1) and (2) and 702-225(1) [~~he~~] the person would not be
19 legally accountable for the conduct of the other person.



1 (2) It [~~is~~] shall not be a defense to a prosecution under
2 section 705-510 that the person solicited could not be guilty of
3 committing the crime because:

4 (a) [~~He~~] The person is, by definition of the offense,
5 legally incapable in an individual capacity of
6 committing the offense solicited;

7 (b) [~~He~~] The person is penally irresponsible or has an
8 immunity to prosecution or conviction for the
9 commission of the crime;

10 (c) [~~He~~] The person is unaware of the criminal nature of
11 the conduct in question or of the defendant's criminal
12 intent; or

13 (d) [~~He~~] The person does not have the state of mind
14 sufficient for the commission of the offense in
15 question."

16 SECTION 9. Section 705-520, Hawaii Revised Statutes, is
17 amended to read as follows:

18 "**§705-520 Criminal conspiracy.** A person is guilty of
19 criminal conspiracy if, with intent to promote or facilitate the
20 commission of a crime:



1 (1) [~~He~~] The person agrees with one or more persons that
2 they or one or more of them will engage in or solicit
3 the conduct or will cause or solicit the result
4 specified by the definition of the offense; and

5 (2) [~~He~~] The person or another person with whom [~~he~~
6 ~~conspired~~] the person conspires commits an overt act
7 in pursuance of the conspiracy."

8 SECTION 10. Section 705-521, Hawaii Revised Statutes, is
9 amended to read as follows:

10 "**§705-521 Scope of conspiratorial relationship.** If a
11 person guilty of criminal conspiracy, as defined in section
12 705-520, knows that a person with whom [~~he~~] the person conspires
13 to commit a crime has conspired with another person or persons
14 to commit the same crime, [~~he~~] the person is guilty of
15 conspiring to commit the crime with [~~such~~] the other person or
16 persons, regardless of whether [~~or not he~~] the person knows
17 [~~their~~] the identity[-] or identities of the other person or
18 persons."

19 SECTION 11. Section 705-523, Hawaii Revised Statutes, is
20 amended by amending subsections (1) and (2) to read as follows:



1 SECTION 12. The purpose of this part is to amend
2 chapter 704, Hawaii Revised Statutes, regarding penal
3 responsibility and fitness to proceed.

4 SECTION 13. Section 704-404, Hawaii Revised Statutes, is
5 amended as follows:

6 1. By amending subsection (3) to read:

7 "(3) An examination performed under this section may
8 employ any method that is accepted by the professions of
9 medicine or psychology for the examination of those alleged to
10 be affected by a physical or mental disease, disorder, or
11 defect; provided that each examiner shall form and render an
12 opinion upon the defendant's fitness to proceed independently
13 from the other examiners, and the examiners, upon approval of
14 the court, may secure the services of clinical psychologists and
15 other medical or paramedical specialists to assist in the
16 examination. The examination shall comply with the other
17 provisions of this section and may be conducted utilizing
18 telehealth, as that term is defined in section 453-1.3(j), at
19 the request of the examiner. The department of health and the
20 department of corrections and rehabilitation shall provide
21 secure access to defendants in their custody for any examination



1 requested to be conducted utilizing telehealth at facilities
2 operated by those departments in which the defendants may be
3 hospitalized or incarcerated."

4 2. By amending subsections (9) and (10) to read:

5 "(9) The court shall obtain all existing relevant medical,
6 mental health, social, police, and juvenile records, including
7 those expunged, and other pertinent records in the custody of
8 public agencies, notwithstanding any other statute, and make the
9 records available for inspection by the examiners in hard copy
10 or digital format. The court may order that the records so
11 obtained be made available to the prosecuting attorney and
12 counsel for the defendant in either format, subject to
13 conditions the court determines appropriate; provided that
14 juvenile records shall not be made available unless
15 constitutionally required. [~~No further disclosure of records~~
16 ~~shall be made except as permitted by law.~~] If, pursuant to this
17 section, the court orders the defendant committed to a hospital
18 or other suitable facility under the control of the director of
19 health, then the county police departments shall provide to the
20 director of health and the defendant copies of all police
21 reports from cases filed against the defendant that have been



1 adjudicated by the acceptance of a plea of guilty or no contest,
2 a finding of guilt, acquittal, acquittal pursuant to section
3 704-400, or [by] the entry of plea of guilty or no contest made
4 pursuant to chapter 853; provided that the disclosure to the
5 director of health and the defendant does not frustrate a
6 legitimate function of the county police departments, with the
7 exception of expunged records, records of or pertaining to any
8 adjudication or disposition rendered in the case of a juvenile,
9 or records containing data from the United States National Crime
10 Information Center. The county police departments shall
11 segregate or sanitize from the police reports information that
12 would result in the likely or actual identification of
13 individuals who furnished information in connection with its
14 investigation, or who were of investigatory interest. The
15 department of corrections and rehabilitation and the department
16 of health may disclose all relevant records between themselves
17 regarding a defendant moved between departments. No further
18 disclosure of records shall be made except as provided by law.

19 (10) [All] Within fourteen days of receipt of a court
20 order, excluding intermediate Saturdays, Sundays, or holidays
21 designated pursuant to section 8-1, or a longer time as the



1 court may prescribe, all public agencies, persons, or other
2 entities in possession of relevant medical, mental health,
3 social, police, and juvenile records, including those expunged,
4 and any other pertinent records of a defendant ordered to be
5 examined under this chapter, shall provide those records to the
6 court[-] in accordance with the terms of the order,
7 notwithstanding any other state statute[-] and without requiring
8 a signed consent from the defendant if the order so provides.
9 An order may provide for a continuing obligation to provide
10 records to the court created or received by public agencies,
11 persons, or other entities after the initial provision of
12 records to the court. In addition, all public agencies shall
13 make records available to an appointed examiner for inspection
14 at locations where the defendant has been or is hospitalized or
15 incarcerated upon request and presentment of a court order
16 authorizing the examiner to make the inspection, notwithstanding
17 any other state statute and without requiring a signed consent
18 of the defendant if the order so provides."

19 SECTION 14. Section 704-406, Hawaii Revised Statutes, is
20 amended to read as follows:



1 "§704-406 Effect of finding of unfitness to proceed and
2 **regained fitness to proceed.** (1) If the court determines that
3 the defendant lacks fitness to proceed, the proceeding against
4 the defendant shall be suspended, except as provided in sections
5 704-407 and 704-421, and the court shall commit the defendant to
6 the custody of the director of health to be placed in an
7 appropriate institution for detention, assessment, care, and
8 treatment; provided that:

9 (a) When the defendant is charged with a petty misdemeanor
10 not involving violence or attempted violence, the
11 defendant shall be diverted from the criminal justice
12 system pursuant to section 704-421; and

13 (b) When the defendant is charged with a misdemeanor not
14 involving violence or attempted violence, the
15 commitment shall be limited to no longer than one
16 hundred twenty days from the date the court determines
17 the defendant lacks fitness to proceed.

18 If the court is satisfied that the defendant may be released on
19 conditions without danger to the defendant or to another or risk
20 of substantial danger to property of others, the court shall
21 order the defendant's release, which shall continue at the



1 discretion of the court, on conditions the court determines
2 necessary; provided that the release on conditions of a
3 defendant charged with a misdemeanor not involving violence or
4 attempted violence shall continue for no longer than one hundred
5 twenty days. A copy of all reports filed pursuant to section
6 704-404 shall be attached to the order of commitment or order of
7 release on conditions that is provided to the department of
8 health. When the defendant is committed to the custody of the
9 director of health for detention, assessment, care, and
10 treatment, the county police departments shall provide to the
11 director of health and the defendant copies of all police
12 reports from cases filed against the defendant that have been
13 adjudicated by the acceptance of a plea of guilty or nolo
14 contendere, a finding of guilt, acquittal, acquittal pursuant to
15 section 704-400, or [by] the entry of a plea of guilty or nolo
16 contendere made pursuant to chapter 853; provided that the
17 disclosure to the director of health and the defendant does not
18 frustrate a legitimate function of the county police
19 departments; provided further that expunged records, records of
20 or pertaining to any adjudication or disposition rendered in the
21 case of a juvenile, or records containing data from the United



1 States National Crime Information Center shall not be provided.
2 The county police departments shall segregate or sanitize from
3 the police reports information that would result in the likely
4 or actual identification of individuals who furnished
5 information in connection with the investigation or who were of
6 investigatory interest. The department of corrections and
7 rehabilitation and the department of health may disclose all
8 relevant records between themselves regarding a defendant moved
9 between departments. No further disclosure of records shall be
10 made except as provided by law.

11 (2) When the defendant is released on conditions after a
12 finding of unfitness to proceed, the department of health shall
13 establish and monitor a fitness restoration program consistent
14 with conditions set by the court order of release, and shall
15 inform the prosecuting attorney of the county that charged the
16 defendant of the program and report the defendant's compliance
17 therewith.

18 (3) The department of health shall periodically report to
19 the court on the defendant's compliance with treatment and
20 fitness restoration. When the court, on its own motion or upon
21 the application of the director of health, the prosecuting



1 attorney, or the defendant, [~~has reason to believe~~] determines,
2 after a hearing if a hearing is requested, that the defendant
3 has regained fitness to proceed, the penal proceeding shall be
4 resumed. If requested by the prosecuting attorney or the
5 defendant, the court may appoint one or more qualified examiners
6 as set forth below to examine and report upon the physical and
7 mental condition of the defendant to assist the court in making
8 the determination of fitness. If an examination is ordered for
9 a defendant charged with the offense of murder in the first or
10 second degree, attempted murder in the first or second degree,
11 or a class A felony, the court shall appoint three qualified
12 examiners and may appoint in all other cases one qualified
13 examiner[, ~~to examine and report upon the physical and mental~~
14 ~~condition of the defendant. In cases in which the defendant has~~
15 ~~been charged with murder in the first or second degree,~~
16 ~~attempted murder in the first or second degree, or a class A~~
17 ~~felony, the court shall appoint as examiners at least one~~
18 ~~psychiatrist and at least one licensed psychologist. The third~~
19 ~~examiner may be a psychiatrist, licensed psychologist, or~~
20 ~~qualified physician]. [One] When appointing three examiners,
21 the court shall appoint as examiners psychiatrists, licensed~~



1 psychologists, or qualified physicians; provided that one of the
2 three examiners shall be a psychiatrist or licensed psychologist
3 designated by the director of health from within the department
4 of health. In all other cases, the one qualified examiner shall
5 be a psychiatrist or licensed psychologist designated by the
6 director of health from within the department of health. The
7 court, in appropriate circumstances, may appoint an additional
8 examiner or examiners. All examiners shall be appointed from a
9 list of certified examiners as determined by the department of
10 health. ~~[After a hearing, if a hearing is requested, if the~~
11 ~~court determines that the defendant has regained fitness to~~
12 ~~proceed, the penal proceeding shall be resumed and the defendant~~
13 ~~shall no longer be committed to the custody of the director of~~
14 ~~health. In cases where a defendant is charged with the offense~~
15 ~~of murder in the first or second degree, attempted murder in the~~
16 ~~first or second degree, or a class A felony, upon the request of~~
17 ~~the prosecuting attorney or the defendant, and in consideration~~
18 ~~of information provided by the defendant's clinical team, the~~
19 ~~court may order that the defendant remain in the custody of the~~
20 ~~director of health, for good cause shown, subject to bail or~~
21 ~~until a judgment on the verdict or a finding of guilt after a~~



1 ~~plea of guilty or nolo contendere. Thereafter, the court may~~
2 ~~consider a request from the director of health to rescind its~~
3 ~~order maintaining the defendant in the director's custody, for~~
4 ~~good cause shown.]~~ As used in this section, the term "qualified
5 physician" means a physician qualified by the court for the
6 specific evaluation ordered. If, ~~[however,]~~ after a
7 determination that the defendant has regained fitness, the court
8 is of the view that so much time has elapsed since the
9 commitment or release on conditions of the defendant that it
10 would be unjust to resume the proceeding, the court may dismiss
11 the charge and:

- 12 (a) Order the defendant to be discharged;
- 13 (b) Subject to section 334-60.2 regarding involuntary
14 hospitalization criteria, order the defendant to be
15 committed to the custody of the director of health to
16 be placed in an appropriate institution for detention,
17 care, and treatment; or
- 18 (c) Subject to section 334-121 regarding assisted
19 community treatment criteria, order the defendant to
20 be released on conditions the court determines
21 necessary.



1 (4) ~~[An examination for regained fitness to proceed~~
2 ~~performed under this section may employ any method that is~~
3 ~~accepted by the professions of medicine or psychology for the~~
4 ~~examination of those alleged to be affected by a physical or~~
5 ~~mental disease, disorder, or defect, and shall include a review~~
6 ~~of records where the defendant, while under the custody of the~~
7 ~~director of health, was placed; provided that each examiner~~
8 ~~shall form and render an opinion on the defendant's regained~~
9 ~~fitness to proceed independently from the other examiners and~~
10 ~~the examiners, upon approval of the court, may secure the~~
11 ~~services of clinical psychologists and other medical or~~
12 ~~paramedical specialists to assist in the examination.] If an~~
13 ~~examination is ordered under subsection (3), the examination and~~
14 ~~report and the compensation of persons making or assisting in~~
15 ~~the examination shall be in accordance with section 704-404(3)~~
16 ~~and (5) to (11).~~

17 ~~[-(5) The report of the examination for regained fitness to~~
18 ~~proceed shall include the following:~~

19 ~~(a) A description of the nature of the examination;~~



1 ~~(b) An opinion as to the defendant's capacity to~~
2 ~~understand the proceedings against the defendant and~~
3 ~~to assist in the defendant's own defense; and~~

4 ~~(c) Where more than one examiner is appointed, a statement~~
5 ~~that the opinion rendered was arrived at independently~~
6 ~~of any other examiner, unless there is a showing to~~
7 ~~the court of a clear need for communication between or~~
8 ~~among the examiners for clarification. A description~~
9 ~~of the communication shall be included in the report.~~
10 ~~After all reports are submitted to the court,~~
11 ~~examiners may confer without restriction.~~

12 ~~(6) All other procedures as set out in section 704-404(6)~~
13 ~~through (11) shall be followed for the completion of the report~~
14 ~~of the examination for regained fitness to proceed performed~~
15 ~~under this section.~~

16 ~~(7)]~~ (5) If a defendant who has either been committed to
17 the custody of the director of health for a limited period
18 pursuant to subsection ~~[(1)]~~ (1) (b) or released on conditions
19 for a limited period pursuant to subsection (1) is not found fit
20 to proceed ~~[prior to]~~ before the expiration of the commitment,
21 the charge for which the defendant was committed for a limited



1 period shall be dismissed. Upon dismissal of the charge, the
2 defendant shall be released from custody or discharged from the
3 release on conditions, whichever is applicable, unless the
4 defendant is subject to prosecution for other charges or subject
5 to section 334-60.2 regarding involuntary hospitalization
6 criteria, in which case the court shall order the defendant's
7 commitment to the custody of the director of health to be placed
8 in an appropriate institution for detention, care, and
9 treatment. Within a reasonable time following any other
10 commitment or release on conditions under subsection (1), the
11 director of health shall report to the court on whether the
12 defendant presents a substantial likelihood of becoming fit to
13 proceed in the future. The court, in addition, may appoint a
14 panel of three qualified examiners in felony cases or one
15 qualified examiner in nonfelony cases to make a report[-] as to
16 whether the defendant presents a substantial likelihood of
17 becoming fit to proceed in the future. The examination and
18 report shall comply with subsections (3) and (4). If, following
19 the receipt of the report[7] or reports, and after a hearing, if
20 a hearing is requested, the court determines that the defendant



1 probably will remain unfit to proceed, the court may dismiss the
2 charge and:

3 (a) Release the defendant; or

4 (b) Subject to section 334-60.2 regarding involuntary
5 hospitalization criteria, order the defendant to be
6 committed to the custody of the director of health to
7 be placed in an appropriate institution for detention,
8 care, and treatment.

9 ~~[(8) If a defendant released on conditions for a limited~~
10 ~~period pursuant to subsection (1) is not found fit to proceed~~
11 ~~prior to the expiration of the release on conditions order, the~~
12 ~~charge for which the defendant was released on conditions for a~~
13 ~~limited period shall be dismissed. Upon dismissal of the~~
14 ~~charge, the defendant shall be discharged from the release on~~
15 ~~conditions unless the defendant is subject to prosecution for~~
16 ~~other charges or subject to section 334-60.2 regarding~~
17 ~~involuntary hospitalization criteria, in which case the court~~
18 ~~shall order the defendant's commitment to the custody of the~~
19 ~~director of health to be placed in an appropriate institution~~
20 ~~for detention, care, and treatment. Within a reasonable time~~
21 ~~following any other release on conditions under subsection (1),~~



1 ~~the court shall appoint a panel of three qualified examiners in~~
2 ~~felony cases or one qualified examiner in nonfelony cases to~~
3 ~~report to the court on whether the defendant presents a~~
4 ~~substantial likelihood of becoming fit to proceed in the future.~~
5 ~~If, following the report, the court determines that the~~
6 ~~defendant probably will remain unfit to proceed, the court may~~
7 ~~dismiss the charge and:~~

8 ~~(a) Release the defendant; or~~

9 ~~(b) Subject to section 334-60.2 regarding involuntary~~
10 ~~hospitalization criteria, order the defendant to be~~
11 ~~committed to the custody of the director of health to~~
12 ~~be placed in an appropriate institution for detention,~~
13 ~~care, and treatment.]"~~

14 SECTION 15. Section 704-407.5, Hawaii Revised Statutes, is
15 amended as follows:

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

17 "(3) An examination performed under this section may
18 employ any method that is accepted by the professions of
19 medicine or psychology for the examination of those alleged to
20 be affected by a physical or mental disease, disorder, or
21 defect; provided that each examiner shall form and render



1 diagnoses and opinions upon the physical and mental condition of
2 the defendant independently from the other examiners, and the
3 examiners, upon approval of the court, may secure the services
4 of clinical psychologists and other medical or paramedical
5 specialists to assist in the examination and diagnosis. The
6 examination shall comply with the other provisions of this
7 section and may be conducted utilizing telehealth, as that term
8 is defined in section 453-1.3(j), at the request of the
9 examiner. The department of health and the department of
10 corrections and rehabilitation shall provide secure access to
11 defendants in their custody for any examination requested to be
12 conducted utilizing telehealth."

13 2. By amending subsections (10) and (11) to read:

14 "(10) The court shall obtain all existing relevant
15 medical, mental health, social, police, and juvenile records,
16 including those expunged, and other pertinent records in the
17 custody of public agencies, notwithstanding any other statute,
18 and make the records available for inspection by the examiners
19 in hard copy or digital format. The court may order that the
20 records so obtained be made available to the prosecuting
21 attorney and counsel for the defendant in either format, subject



1 to conditions the court determines appropriate; provided that
2 juvenile records shall not be made available unless
3 constitutionally required. The department of corrections and
4 rehabilitation and the department of health may disclose all
5 relevant records between themselves regarding a defendant moved
6 between departments. No further disclosure of records shall be
7 made except as permitted by law.

8 (11) [All] Within fourteen days of receipt of a court
9 order, excluding intermediate Saturdays, Sundays, or holidays
10 designated pursuant to section 8-1, or a longer time as the
11 court may prescribe, all public agencies, persons, or other
12 entities in possession of relevant medical, mental health,
13 social, police, and juvenile records, including those expunged,
14 and any other pertinent records of a defendant ordered to be
15 examined under this chapter, shall provide those records to the
16 court[7] in accordance with the terms of the order,
17 notwithstanding any other state statute[-] and without requiring
18 a signed consent from the defendant if the order so provides.
19 An order may provide for a continuing obligation to provide
20 records to the court created or received by public agencies,
21 persons, or other entities after the initial provision of



1 records to the court. In addition, all public agencies shall
2 make records available to an appointed examiner for inspection
3 at the location where the records are maintained upon request
4 and presentment of a court order authorizing the examiner to
5 make the inspection, notwithstanding any other state statute and
6 without requiring a signed consent from the defendant if the
7 order so provides."

8 PART V

9 SECTION 16. The purpose of this part is to amend
10 chapter 706, Hawaii Revised Statutes, regarding the disposition
11 of convicted defendants.

12 SECTION 17. Section 706-623, Hawaii Revised Statutes, is
13 amended by amending subsection (1) to read as follows:

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

- 18 (a) Ten years upon conviction of a class A felony;
19 (b) Five years upon conviction of a class B or class C
20 felony under part II, V, or VI of chapter 707,
21 chapter 709, and part I of chapter 712 [~~and four~~];



1 (c) Four years upon conviction of any other class B [~~or C~~]
2 felony[~~+~~], a class C felony under part III, IV, or VII
3 of chapter 707, and a class C felony under part XIII
4 of chapter 708;

5 (d) Three years upon conviction of any other class C
6 felony;

7 [~~(e)~~] (e) One year upon conviction of a misdemeanor;
8 [~~except~~] provided that upon a conviction under
9 section 586-4, 586-11, [~~or~~] 709-906, or 712- , the
10 court may sentence the defendant to a period of
11 probation not exceeding two years; or

12 [~~(d)~~] (f) Six months upon conviction of a petty
13 misdemeanor; provided that up to one year may be
14 imposed upon a finding of good cause; except upon a
15 conviction under section 709-906, the court may
16 sentence the defendant to a period of probation not
17 exceeding one year.

18 The court, on application of a probation officer, on application
19 of the defendant, or on its own motion, may discharge the
20 defendant at any time. [~~Prior to~~] Before the court granting
21 early discharge, the defendant's probation officer shall be



1 required to report to the court concerning the defendant's
2 compliance or non-compliance with the conditions of the
3 defendant's probation and the court shall afford the prosecuting
4 attorney an opportunity to be heard. The terms of probation
5 provided in this part, other than in this section, shall not
6 apply to sentences of probation imposed under section 706-
7 606.3."

8 PART VI

9 SECTION 18. The purpose of this part is to amend
10 chapter 709, Hawaii Revised Statutes, regarding offenses against
11 family and against incompetents.

12 SECTION 19. Section 709-906, Hawaii Revised Statutes, is
13 amended by amending subsection (19) to read as follows:

14 "(19) 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":

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 "Physically abuse" means to engage in conduct that injures,
8 hurts, or damages a person's body."

9 PART VII

10 SECTION 20. The purpose of this part is to amend
11 chapter 710, Hawaii Revised Statutes, regarding offenses against
12 public administration.

13 SECTION 21. Section 710-1012, Hawaii Revised Statutes, is
14 amended to read as follows:

15 ~~"§710-1012 [Refusing to assist in fire control.]~~
16 Disobeying an order or regulation relating to the conduct of
17 persons in the vicinity of a fire. (1) A person commits the
18 offense of ~~[refusing to assist in fire control]~~ disobeying an
19 order or regulation relating to the conduct of persons in the
20 vicinity of a fire when[+]



1 ~~(a) Upon a reasonable command by a person known to him to~~
2 ~~be a firefighter, he intentionally refuses to aid in~~
3 ~~extinguishing a fire or in protecting property at the~~
4 ~~scene of a fire; or~~

5 ~~(b) Upon]~~
6 upon command by a person known to [him] the person to be a
7 firefighter ~~[or]~~, law enforcement officer, ~~[he intentionally]~~
8 emergency medical services personnel, or emergency medical
9 technician, the person knowingly disobeys an order or regulation
10 relating to the conduct of persons in the vicinity of a fire.

11 (2) ~~["Firefighter"]~~ For the purposes of this section,
12 "firefighter" means any officer of a fire department or any
13 other person vested by law with the duty to extinguish fires.

14 (3) ~~[Refusing to assist in fire control]~~ Disobeying an
15 order or regulation relating to the conduct of persons in the
16 vicinity of a fire is a petty misdemeanor.

17 ~~[(4) A person who complies with this section by assisting~~
18 ~~in fire control shall not be held liable to any person for~~
19 ~~damages resulting therefrom, provided he acted reasonably under~~
20 ~~the circumstances known to him at the time.]"~~



1 SECTION 22. Section 710-1021, Hawaii Revised Statutes, is
2 amended to read as follows:

3 **"§710-1021 Escape in the second degree.** (1) A person
4 commits the offense of escape in the second degree if the person
5 intentionally escapes from a correctional or detention facility
6 or from custody.

7 (2) Escape in the second degree is a class C felony.

8 (3) Notwithstanding subsection (2), if the offense was
9 committed by a person under the custody of the director of
10 health solely pursuant to section 704-421(1) for a petty
11 misdemeanor not involving violence or attempted violence, it
12 shall be a petty misdemeanor; provided that this subsection
13 shall not apply if the person is arrested for a new felony
14 offense in the course of the escape or during the pendency of
15 the escape."

16 SECTION 23. Section 710-1011, Hawaii Revised Statutes, is
17 repealed.

18 [~~"§710-1011 Refusing to aid a law enforcement officer.~~

19 ~~(1) A person commits the offense of refusing to aid a law~~
20 ~~enforcement officer when, upon a reasonable command by a person~~



1 ~~known to him to be a law enforcement officer, he intentionally~~
2 ~~refuses or fails to aid such law enforcement officer, in:~~

3 ~~(a) Effectuating or securing an arrest; or~~

4 ~~(b) Preventing the commission by another of any offense.~~

5 ~~(2) Refusing to aid a law enforcement officer is a petty~~
6 ~~misdemeanor.~~

7 ~~(3) A person who complies with this section by aiding a~~
8 ~~law enforcement officer shall not be held liable to any person~~
9 ~~for damages resulting therefrom, provided he acted reasonably~~
10 ~~under the circumstances known to him at the time."]~~

11 PART VIII

12 SECTION 24. The purpose of this part is to amend
13 chapter 711, Hawaii Revised Statutes, regarding offenses against
14 public order.

15 SECTION 25. Chapter 711, Hawaii Revised Statutes, is
16 amended by adding a new section to part I to be appropriately
17 designated and to read as follows:

18 "§711- **Consenting to unreasonable noise on premises.** A
19 renter, resident, owner-occupant, or other person responsible
20 for a premises who intentionally, knowingly, recklessly, or
21 negligently allows another person to make unreasonable noise on



1 the premises shall be guilty of a violation. It shall not be a
2 defense to this section that verbal or written orders to desist
3 were given to the person making unreasonable noise, without
4 pursuing any further consequences upon the person making
5 unreasonable noise, if the unreasonable noise persists
6 thereafter."

7 SECTION 26. Section 711-1100, Hawaii Revised Statutes, is
8 amended by adding a new definition to be appropriately inserted
9 and to read as follows:

10 "Make unreasonable noise" means to make noise that:

11 (1) Considering the nature and purpose of the person's
12 conduct and the circumstances known to the person,
13 including the nature of the location and the time of
14 the day or night, involves a gross deviation from the
15 standard of conduct that a law-abiding citizen would
16 follow in the same situation; or

17 (2) Fails to heed the admonition of a police officer that
18 the noise is unreasonable and should be stopped or
19 reduced."

20 SECTION 27. Section 711-1101, Hawaii Revised Statutes, is
21 amended by amending subsections (2) and (3) to read as follows:



1 SECTION 28. The purpose of this part is to amend
2 chapter 712, Hawaii Revised Statutes, regarding offenses against
3 public health and morals.

4 SECTION 29. Chapter 712, Hawaii Revised Statutes, is
5 amended by adding a new section to part IV to be appropriately
6 designated and to read as follows:

7 "§712- Possessing a dangerous drug in the second
8 degree. (1) A person commits the offense of possessing a
9 dangerous drug in the second degree if the person knowingly
10 possesses any dangerous drug in any amount.

11 (2) Possessing a dangerous drug in the second degree is a
12 misdemeanor.

13 (3) Whenever a court sentences a person, grants a motion
14 for deferral, or grants a conditional discharge, the court shall
15 also require that the person complete a substance abuse
16 assessment. The court may require the person to participate in
17 treatment at an appropriate level, as recommended by the
18 assessment.

19 (4) For a third or any subsequent conviction within five
20 years of a second or subsequent conviction, the sentence shall
21 be six months incarceration as a term and condition of probation



1 with early release to a substance abuse treatment program or up
2 to one year incarceration."

3 SECTION 30. Section 712-1243, Hawaii Revised Statutes, is
4 amended to read as follows:

5 "§712-1243 [Promoting] Possessing a dangerous drug in the
6 [third] first degree. (1) A person commits the offense of
7 [promoting] possessing a dangerous drug in the [third] first
8 degree if the person knowingly possesses [any dangerous drug in
9 any amount.]:

10 (a) Three to twenty-four capsules, tablets, ampules,
11 dosage units, or syrettes, containing one or more
12 dangerous drugs; or

13 (b) One or more preparations, compounds, mixtures, or
14 substances of an aggregate weight of:

15 (i) 0.5 grams up to 3.53 grams containing
16 methamphetamine, heroin, morphine, cocaine, or
17 fentanyl or any of their respective salts,
18 isomers, and salts of isomers; or

19 (ii) 2.0 grams up to 6.99 grams containing any
20 dangerous drug.



1 SECTION 33. Section 804-7, Hawaii Revised Statutes, is
2 amended to read as follows:

3 **"§804-7 Release after bail.** The judiciary, in
4 consultation with the department of corrections and
5 rehabilitation and the department of the attorney general, shall
6 establish, on or before _____, and administer a statewide
7 program that permits the posting of monetary bail
8 seven-days-a-week for defendants who remain in the custody of
9 the director of corrections and rehabilitation. This program
10 shall be made available to any defendant for whom a monetary
11 amount of bail has been set by the police, other law enforcement
12 agency, or the court. The judiciary may contract with a single
13 vendor to administer the program. The vendor may charge users
14 of the program a service fee. Upon posting of bail, the
15 defendant shall be released from custody forthwith."

16 SECTION 34. Section 804-7.1, Hawaii Revised Statutes, is
17 amended to read as follows:

18 **"§804-7.1 Conditions of release on bail, recognizance, or**
19 **supervised release.** Upon a showing that there exists a danger
20 that the defendant will commit a serious crime or will seek to
21 intimidate witnesses, or will otherwise unlawfully interfere



1 with the orderly administration of justice, the judicial officer
2 named in section 804-5 may deny the defendant's release on bail,
3 recognizance, or supervised release.

4 Upon the defendant's release on bail, recognizance, or
5 supervised release, however, the court may enter an order:

- 6 (1) Prohibiting the defendant from approaching or
7 communicating with particular persons or classes of
8 persons[~~, except~~]; provided that no such order should
9 be deemed to prohibit any lawful and ethical activity
10 of defendant's counsel;
- 11 (2) Prohibiting the defendant from going to certain
12 described geographical areas or premises;
- 13 (3) Prohibiting the defendant from possessing any
14 dangerous weapon, engaging in certain described
15 activities, or indulging in intoxicating liquors or
16 certain drugs;
- 17 (4) Requiring the defendant to report regularly to and
18 remain under the supervision of an officer of the
19 court;



- 1 (5) Requiring the defendant to maintain employment, or, if
2 unemployed, to actively seek employment, or attend an
3 educational or vocational institution;
- 4 (6) Requiring the defendant to comply with a specified
5 curfew;
- 6 (7) Requiring the defendant to seek and maintain mental
7 health treatment or testing, including treatment for
8 drug or alcohol dependency, or to remain in a
9 specified institution for that purpose;
- 10 (8) Requiring the defendant to remain in the jurisdiction
11 of the judicial circuit in which the charges are
12 pending unless approval is obtained from a court of
13 competent jurisdiction to leave the jurisdiction of
14 the court;
- 15 (9) Requiring the defendant to submit to the use of
16 electronic monitoring and surveillance;
- 17 (10) Requiring the confinement of the defendant in the
18 defendant's residence;
- 19 (11) Requiring the defendant to satisfy any other condition
20 reasonably necessary to ensure the appearance of the



1 SECTION 35. The purpose of this part is to ensure that the
2 amendments made to section 709-906(19), Hawaii Revised Statutes,
3 by section 19 of this Act are not made moot before the
4 amendments can take effect.

5 SECTION 36. Act 19, Session Laws of Hawaii 2020, is
6 amended by amending section 15 to read as follows:

7 "SECTION 15. This Act shall take effect on January 1,
8 2021; provided that sections 2[~~7-37~~] and 4 shall be repealed on
9 June 30, 2026; provided further that sections 706-623[~~7~~
10 ~~709-906~~], and 853-4, Hawaii Revised Statutes, shall be reenacted
11 in the form in which they read on the day prior to the effective
12 date of this Act."

13 SECTION 37. Act 238, Session Laws of Hawaii 2021, is
14 amended by amending section 4 to read as follows:

15 "SECTION 4. This Act shall take effect upon its approval;
16 provided that section 1 shall be repealed on June 30, 2026;
17 provided further that section 709-906, Hawaii Revised Statutes,
18 shall be reenacted in the form in which it read on [~~December 31,~~
19 ~~2020.~~] the day prior to the effective date of this Act."



1 SECTION 38. Act 23, Session Laws of Hawaii 2023, as
2 amended by Act 178, Session of Hawaii 2024, is amended by
3 amending section 7 to read as follows:

4 "SECTION 7. This Act shall take effect upon its approval;
5 provided that the amendments made to section 709-906, Hawaii
6 Revised Statutes, by section 4 of this Act shall not be repealed
7 when that section is reenacted on June 30, 2026, pursuant to[+
8 ~~(1) Section 15 of Act 19, Session Laws of Hawaii 2020; and~~
9 ~~(2) Section]~~ section 4 of Act 238, Session Laws of Hawaii
10 2021."

11 PART XII

12 SECTION 39. This Act does not affect rights and duties
13 that matured, penalties that were incurred, and proceedings that
14 were begun before its effective date.

15 SECTION 40. Statutory material to be repealed is bracketed
16 and stricken. New statutory material is underscored.

17 SECTION 41. This Act shall take effect on July 1, 3000;
18 provided that:

19 (1) Section 17 and part XI shall take effect on June 29,
20 2026; provided further that the amendments made to
21 section 706-623(1), Hawaii Revised Statutes, by



1 section 17 of this Act shall not be repealed when that
2 section is reenacted on June 30, 2026, pursuant to
3 section 15 of Act 19, Session Laws of Hawaii 2020; and
4 (2) The amendments made to section 709-906(19), Hawaii
5 Revised Statutes, by section 19 of this Act shall not
6 be repealed when that section is reenacted on June 30,
7 2026, pursuant to section 4 of Act 238, Session Laws
8 of Hawaii 2021.



Report Title:

Hawaii Penal Code; Committee Recommendations; Implementation

Description:

Implements recommendations from the 2025 Advisory Committee on Penal Code Review, established pursuant to Act 245, SLH 2024, to amend the Hawaii Penal Code. Effective 7/1/3000. (HD1)

The summary description of legislation appearing on this page is for informational purposes only and is not legislation or evidence of legislative intent.

