Supreme Court – THE JUDICIARY • STATE OF HAWAI'I
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Sabrina S. McKenna
ACTING CHIEF JUSTICE

November 17, 2025

Via electronic submission

The Honorable Ronald D. Kouchi
President of the Senate
State Capitol, Room 409
Honolulu, HI 96813

The Honorable Nadine K. Nakamura
Speaker of the House of Representatives
State Capitol, Room 431
Honolulu, HI 96813

Re: Final Report of the 2025 Advisory Committee on Penal Code Review

Dear President Kouchi and Speaker Nakamura:

Pursuant to Act 245, Sessions Law of Hawai'i 2024, I hereby transmit for your consideration and review the Final Report of the 2025 Advisory Committee on Penal Code Review (the "Final Report").

The Final Report provides the Legislature with a total of twenty-five proposals and recommendations, along with a discussion summary of issues addressed by the 2025 Advisory Committee on Penal Code Review (the "Committee").

The membership of the Committee was diverse and large, and included the Senate Judiciary Committee Chairperson, the House of Representatives Judiciary and Hawaiian Affairs Committee Chairperson, sixteen jurists representing all courts (Supreme Court, Intermediate Court of Appeals, Circuit Court, Family Court, and District Court) and all four Judicial Circuits, prosecutors from all counties and the Department of the Attorney General, lawyers from the Public Defender's Office and the private defense bar, medical professionals, law enforcement officers, advocates for victims' rights, advocates for prisoner rights, the Director of the Department of Corrections and Rehabilitation, and interested members of the public.

The Committee began work on November 1, 2024, and met in plenary session nine times. Eight subcommittees also met separately on a number of occasions to consider issues of community concern, and prepare proposals for the larger Committee's consideration and vetting.

The legislative proposals in the Final Report are made only after supermajority approval of the Committee, and reflect broad consensus of the diverse membership. Due to the supermajority approval requirement, and the diversity of members, many of the issues the subcommittees researched, prepared, and presented, did not result in legislative proposals. These issues, and the differing opinions of the membership, are nevertheless captured in the Final Report.

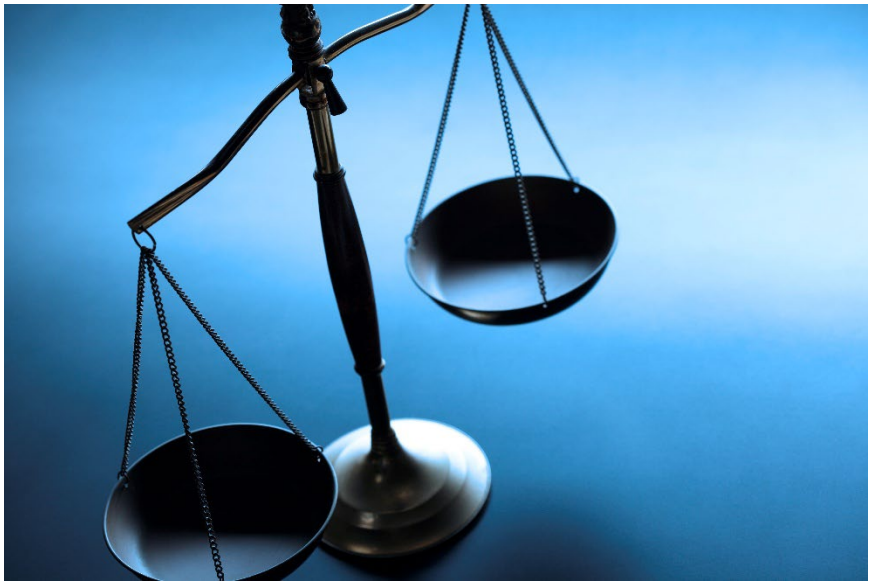
Finally, I am pleased to note that the Committee was able to accomplish its duties without any expense to the Legislature. By adhering to the Judiciary's interest of leveraging technology, all research was conducted online, and all meetings were conducted via Zoom teleconferencing.

On behalf of the Judicial Council and the Committee, thank you for the opportunity to be of service to the Legislature and the people of Hawai'i.

Respectfully submitted,

Sabrina S. McKenna
Acting Chief Justice

FINAL REPORT OF THE 2025 ADVISORY COMMITTEE ON PENAL CODE REVIEW



Submitted to the Thirty-Third Legislature
of the State of Hawai‘i
2026 Regular Session

To: Acting Chief Justice Sabrina S. McKenna
Supreme Court of the State of Hawai'i

From: Paul B.K. Wong, Chair
2025 Advisory Committee on Penal Code Review

Re: Final Report of the 2025 Advisory Committee on Penal Code Review

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I. Introduction

This is the final report of the 2025 Advisory Committee on Penal Code Review (the "Committee"), appointed by the Honorable Mark E. Recktenwald (Ret.), then Chief Justice of the State of Hawai'i, and the Judicial Council, to carry out the request of the 2024 Legislature in Act 245, Sessions Law of Hawaii 2024 ("Act 245 SLH2024"), to review and recommend revisions to the Hawai'i Revised Statutes Title 37 (the "Penal Code"). The Committee's primary work product is divided into two sections of this report: (1) Section VI Legislative Proposals, and (2) Section VII Issues without Recommendations.

Act 245 SLH2024 sought from the Judicial Council a comprehensive review of the current Penal Code to ensure it is: (1) consistent and proportional across classes of offenses; (2) aligned with national best practices and utilizing evidence-based strategies; (3) cost-effective in advancing penal interests and providing equal justice to all in our community; and (4) responsive to offenders suffering from mental illness. A copy of Act 245 SLH2024 is attached hereto as Appendix A.

II. Membership of the Committee

The 2024 Legislature, through Act 245 SLH2024, sought the inclusion of a broad section of our community members interested in criminal law and civil liberties to participate on the Committee. To embrace the Legislature's direction of inclusion and breadth, the Committee was much larger than previous Penal Code Review Committees and consisted of 61 members from a diverse cross-section of the community affected by the criminal laws in Hawai'i. The membership included the Senate Judiciary Committee Chairperson, the House of Representatives Judiciary and Hawaiian Affairs Committee Chairperson, sixteen jurists representing all courts (Supreme Court, Intermediate Court of Appeals, Circuit Court, Family Court, and District Court) and all four Judicial Circuits, prosecutors from all counties and the Department of the Attorney General, lawyers from the Public Defender's Office and the private defense bar, medical professionals, law enforcement officers, advocates for victims' rights, advocates for prisoner rights, the Director of the Department of Corrections and Rehabilitation, and interested members of the public. The members of the 2025 Penal Code Review Committee are:

1. Saifoloi Aganon
   Probation Administrator
   Judiciary of the State of Hawai'i

2. Sean Aronson, Esq.
   Staff Attorney
   House Judiciary and Hawaiian Affairs Committee

3. Jennifer Awong, Esq.
   Staff Attorney, Criminal Division
   Circuit Court of the First Circuit

4. Rosemarie Albano
   Director, Victim Witness Kokua Services
   Department of the Prosecuting Attorney, City and County of Honolulu

5. Brenda Bauer-Smith, Psy.D.
   Chief, Court Evaluation Branch
   Department of Health, State of Hawai'i

6. Scott Bell, Esq.
   Deputy Prosecuting Attorney
   City and County of Honolulu

7. Parker Bode
Major, Human Resources Division
Honolulu Police Department

8. Kat Brady
Coordinator
Community Alliance on Prisons

9. Thomas Brady, Esq.
1st Deputy Prosecuting Attorney
City and County of Honolulu

10. Jason Burks, Esq.
Attorney at Law

11. Michael Champion, M.D.
Senior Advisor for Mental Health and the Justice System
Office of the Governor of the State of Hawai‘i

12. Hayley Cheng, Esq.
1st Deputy Public Defender
State of Hawai‘i

13. Hon. Brian Costa
Circuit Court of the First Circuit

14. David Day, Esq.
Special Assistant to the Attorney General
Department of the Attorney General, State of Hawai‘i

15. Hon. Wendy DeWeese
Chief Judge
Circuit Court of the Third Circuit

16. Adrian Dhakhwa, Esq.
Deputy Attorney General
Department of the Attorney General, State of Hawai‘i

17. Hon. Christopher Dunn
Deputy Chief Judge
District Court of the Second Circuit

18. Dennis Dunn

19. Hon. Todd Eddins
Associate Justice
Supreme Court of the State of Hawai‘i

20. Pamela Ferguson-Brey, Esq.
Executive Director
Crime Victim Compensation Commission

21. Hon. Tracy Fukui
District Court of the First Circuit

22. Nelson Goo, Esq.
Attorney at Law

23. Nelson Hamilton
Captain
Maui Police Department

24. Daylin-Rose Heather, Esq.
Deputy Administrative Director of the Courts

25. Jon Ikenaga, Esq.
Public Defender
State of Hawai‘i

26. Hon. Ronald Johnson
Deputy Chief Judge/Criminal Administrative Judge
Circuit Court of the First Circuit

27. Tommy Johnson
Director, Department of Corrections and Rehabilitation
State of Hawai‘i

28. Ku‘ike Kamaka-Ohelo
Director of Wellbeing
Office of Hawaiian Affairs

29. Jongwook “Wookie” Kim
Legal Director
ACLU Hawai‘i

30. Chad Kumagai
Deputy Prosecuting Attorney
County of Maui

31. Hon. M. Kanani Laubach
Deputy Chief Judge
District Court of the Third Circuit

32. Rebecca Lester
Deputy Prosecuting Attorney
County of Hawai‘i

33. Nikos Leverenz
Grants and Advancement Manager
Hawai‘i Health and Harm Reduction Center

34. James Lindblad
President
A-1 Bonding, Inc.

35. Benjamin Lowenthal, Esq.
Attorney at Law

36. Hon. Clarissa Malinao
Circuit Court of the First Circuit

37. Hon. Sonja McCullen
Associate Judge
Intermediate Court of Appeals, State of Hawai‘i

38. Hon. Gregory Meyers
District Court of the Fifth Circuit

39. Thomas Michener, Esq.
Deputy Attorney General
Department of the Attorney General, State of Hawai‘i

40. Hon. Trish Morikawa
Circuit Court of the First Circuit

41. Tracy Murakami, Esq. (succeeding Ramsey Ross, Esq.)
Deputy Prosecuting Attorney
County of Kauai

42. Tricia Nakamatsu, Esq.
Deputy Attorney General
Department of the Attorney General, State of Hawai‘i

43. Brandon Nakasato
Major, Professional Standards Office
Honolulu Police Department

44. Matthew Nardi, Esq.
Attorney at Law

45. Sarah Nishioka, Esq.
Deputy Public Defender
State of Hawai‘i

46. Bradon Ogata
Major, District 6
Honolulu Police Department

47. Stanton Oshiro, Esq.
Attorney at Law

48. Jerome Pacarro
Captain, Narcotics/Vice Division
Honolulu Police Department

49. Hon. Catherine Remigio
Circuit Court of the First Circuit

50. Hon. Karl Rhoads
Senate Judiciary Committee Chairperson

51. Richard Sing, Esq.
Attorney at Law

52. Hon. Rowena Somerville
Circuit Court of the First Circuit

53. James Tabe, Esq.
Attorney at Law

54. Hon. David Tarnas
House Judiciary and Hawaiian Affairs Committee Chairperson

55. David Van Acker, Esq.
Deputy Attorney General
Department of the Attorney General, State of Hawai‘i

56. Hon. Matthew Viola
Circuit Court of the First Circuit

57. Aaron Wills, Esq.
Attorney at Law

58. Zachary Wingert, Esq.
Deputy Public Defender
State of Hawai‘i

59. Hon. Paul Wong
Circuit Court of the First Circuit

60. Hon. Kristine Yoo
District Court of the First Circuit

61. Kory Young, Esq.
Deputy Attorney General
Department of the Attorney General, State of Hawai‘i

III. Organization of the Subcommittees

The Committee was divided into eight Subcommittees, each with the primary responsibility to review one or more chapters of the Penal Code. The following is a list of the Subcommittees and their respective Chairpersons:

1. Chapter 701: Preliminary Provisions
   Chapter 702: General Principles of Penal Liability
   Chapter 703: General Principles of Justification
   Chapter 705: Inchoate Crimes
   Subcommittee Chair: Judge Wendy DeWeese

2. Chapter 704: Penal Responsibility and Fitness to Proceed
   Subcommittee Chair: Judge M. Kanani Laubach

3. Chapter 706: Disposition of Convicted Defendants
   Chapter 853: Deferred Acceptance of Guilty and No Contest Plea
   Subcommittee Chair: Judge Matthew Viola

4. Chapter 707: Offenses Against the Person
   Chapter 709: Offenses Against Family and Against Incompetents
   Chapter 134: Firearms, Ammunition and Dangerous Weapons
   Subcommittee Chair: Judge Gregory Meyers

5. Chapter 708: Offenses Against Property Rights
   Subcommittee Chair: Judge Clarissa Malinao

6. Chapter 710: Offenses Against Public Administration
   Chapter 711: Offenses Against Public Order
   Subcommittee Chair: Judge Tracy Fukui

7. Chapter 712: Offenses Against Public Health and Morals
   Subcommittee Chair: Judge Trish Morikawa

8. Chapter 804: Bail and Bonds (Pretrial Release)
   Subcommittee Chair: Judge Christopher Dunn

Appendix B attached hereto contains the Subcommittee rosters, meeting dates, and other work-up information. Some members were assigned to subcommittees due to their expertise. Other members were allowed to select their subcommittee, move between subcommittees, participate in multiple subcommittees, and/or attend plenary sessions without specific subcommittee assignments.

IV. Work of the Committee

The Committee met in plenary session, usually on the first Friday of the calendar month, on the following dates:

November 1, 2024
February 7, 2025
March 7, 2025
June 6, 2025
July 11, 2025
August 1, 2025
September 5, 2025
October 3, 2025
October 31, 2025

The Subcommittees generally met on the first Friday of the months between the plenary sessions, and whenever a Subcommittee Chairperson deemed appropriate for additional meetings as reflected in Appendix B.

The Subcommittees reviewed their respective Penal Code chapters and were responsible for analyzing issues of concern and crafting legislative solutions. Through their work, the Subcommittees then presented recommended legislative changes for further discussion and vetting by the overall Committee in plenary session. Each Subcommittee identified a broad array of issues for discussion and analysis. However, not all issues resulted in legislative proposals. Many issues were discussed, but for a myriad of reasons, did not result in legislative recommendations. The inability to present a legislative recommendation could reflect the failure to obtain consensus approval because of competing societal interests, ineffective use of resources, and/or the aversion to create new penal statutes when existing statutes can address the perceived need. Essentially, from the broad array of issues identified by members in their respective subcommittees, these issues were winnowed down before any legislative proposals would be presented to the Committee in plenary session.

By agreement of the Committee, only the legislative proposals that gained *supermajority* approval in plenary session would result in recommendations for the 2026 Legislature. Supermajority approval required two-thirds of all voting members at any plenary session. During every plenary session, the Committee had a quorum of more than half of the total membership for voting. Given the constraints of the voting procedures, legislative recommendations made in this report reflect broad acceptance of the members of the Committee, and the respective interests that they represent.

V. Executive Summary

The Penal Code is remarkably durable in addressing the community's need of identifying and addressing antisocial behavior worthy of criminal penalties. Stated differently, the Committee believes the Penal Code is currently effective, should be reviewed and changed, but not significantly. Reflective of the large and diverse membership, the work of the Committee focused not on the technical operation of the Penal Code, but on larger policy issues that are at the forefront of the community's consciousness at the present time. As a result, the Committee approved 25 legislative recommendations by supermajority vote, and they are presented in Section VI of this report entitled "Legislative Proposals." The following is a summary of the recommended amendments to the Penal Code:

Chapter 701: Preliminary Provisions
Chapter 705: Inchoate Crimes

The amendment to Hawai'i Revised Statutes ("HRS") section 701-107 clarifies that whenever the Legislature creates statutes involving criminal liability, they are treated as such even though these legislative enactments are not within the Penal Code (HRS Title 37). Many crimes are defined outside of the Penal Code, e.g., firearm violations in HRS Chapter 134. This proposed amendment creates consistency throughout the statutory scheme of the HRS.

The "Statute of Limitations" in section 701-108 should be amended to change the time period to prosecute parking violations as the same time to prosecute petty misdemeanors, rather than a more serious misdemeanor. The recommendation would allow prosecution of a parking violation within one year of the offense, rather than two years. In contrast, prosecution for Class B and Class C felony offenses must begin within three years, and Class A felony offenses must begin within six years.

The proposed amendment to section 701-106 clarifies the standard of proof whenever a finding of fact is necessary. A fact must be proved by a "preponderance of the evidence" unless otherwise specified by the Legislature (other specified standards include "clear and convincing evidence" and "proof beyond a reasonable doubt").

The recommended amendments to sections 705-501, 705-511, 705-520, 705-521, 705-523 make the respective provisions gender neutral and consistent with the remainder of the Penal Code.

Chapter 704: Penal Responsibility and Fitness to Proceed

Consistent with the request of the Legislature in Act 245 2024SLH to review the Penal Code and be more responsive to offenders suffering from mental illness, the proposed legislative revisions to HRS Chapter 704 are the most substantive in this report. The proposed legislative revisions to HRS Chapter 704 seek to modernize and expedite the transfer of information, and patients, between the Department of Health ("DOH") and Department of Corrections and Rehabilitation ("DCR"). The recommendations facilitate faster mental examination of defendants, minimize the time between court decisions and transfer of a defendant's custody between the DOH and the DCR, leverage the medical treatment already afforded to this defendant population, and ultimately, reduce the length of stay by defendants at the Hawai'i State Hospital (the "State Hospital").

When criminal defendants manifest mental health disorders that prevent them from assisting in their defense (i.e., they are mentally "unfit"), their respective criminal proceedings are suspended until examinations by mental health professionals (psychiatrists or psychologists) are performed and the court can determine a defendant's mental "fitness to proceed." Mental health examinations can be delayed due to a variety of factors including the unavailability of relevant medical records and difficulty meeting with defendants. Revisions to sections 704-404, 704-406, and 704-407.5 codify and simplify the collection of medical records for review by the examiners. These sections are also modified to allow telehealth examination of criminal defendants.

Unfit criminal defendants are often transferred to the custody of the DOH and the State Hospital for treatment until they regain fitness to proceed. Currently, another set of court-appointed examinations is required before a defendant can be found fit, transferred from the State Hospital back to the custody of DCR, and allow resumption of the underlying criminal proceedings. This requirement of another set of court-appointed examinations omits the input of a defendant's treatment providers and lengthens the proceedings. The significant revisions of section 704-406 expedite the transfer of defendants out of the State Hospital, especially when there is no dispute that a defendant is fit to proceed and should be returned to the DCR for further criminal proceedings.

Chapter 706: Disposition of Convicted Defendants

The proposal to amend section 706-623 will reduce the initial probation term for non-violent felony defendants from four years to three years. This recommendation is in response to the Pew Charitable Trust study in December 2020 that ranked Hawai'i with the longest average probation lengths. While

many factors are responsible for extending probation terms, this proposal starts to address the issue with the lowest level of felony offenders. Violent and more serious felony offenders are still subject to probation terms of four, five, and ten years.

Chapter 709: Offenses Against Family and Against Incompetents

The Committee proposes defining "physically abuse" for the offense of Abuse of family or household members in section 709-906. Abuse of family or household members is charged as felony offenses, misdemeanor offenses, and petty misdemeanor offenses. The proposed definition follows current caselaw and standardizes an element of an offense that is widely charged in criminal cases.

Chapter 710: Offenses Against Public Administration

The Committee proposes the repeal of section 710-1011 Refusing to aid a law enforcement officer. This offense is rarely charged, and complying with the requirements of this statute may place private citizens in harm's way.

The Committee proposes a heavy revision and renaming of section 710-1012 Refusing to assist in fire control to "Disobeying an order or regulation relating to the conduct of persons in the vicinity of a fire." Similar to the considerations of section 710-1011, this statute is rarely used, and compliance could endanger a private citizen. However, the renamed statute still maintains the community interest that private citizens obey the explicit commands of first responders.

The recommended amendment to section 710-1021 Escape in the second degree avoids a draconian outcome for non-violent defendants charged with a petty misdemeanor when they "flee" the custody of the DOH. Currently, these defendants could be charged with a Class C felony when their underlying petty misdemeanor charge limits the maximum incarceration to 30 days.

Chapter 711: Offenses Against Public Order

The Committee recommends amendment of section 711-1101 Disorderly conduct, the creation of a new offense entitled "Consenting to unreasonable noise on premises," and an amendment of section 711-1100 to define "unreasonable noise." These amendments clarify when the offense of Disorderly conduct is a petty misdemeanor and when it is a violation. The creation of an unreasonable noise violation in residential settings addresses a

situation when noise creates a public nuisance but does not rise to the level of "disorderly conduct."

Chapter 712: Offenses Against Public Health and Morals

The Committee recommends the creation of a minimum threshold amount of dangerous drugs such as cocaine, heroin, methamphetamine, and fentanyl, before possession becomes a felony offense. The proposed legislation is a revision and renaming of section 712-1243 Promoting a dangerous drug in the third degree into an offense entitled "Possessing a dangerous drug in the first degree." This revision specifies the minimum amount of 0.5 grams of methamphetamine, heroin, morphine, cocaine, or fentanyl, and 2.0 grams of any other dangerous drug for felony liability.

The Committee also proposes the creation of a new offense of section 712-1243.5 Possessing a dangerous drug in the second degree. This new misdemeanor offense applies to cases where a defendant possesses only trace amounts or residue of dangerous drug (amounts that have no commercial value). The Committee believes the threshold amount allows less serious offenders to be treated as substance abusers with rehabilitative needs, rather than on the level akin to major criminal offenders.

The remaining legislative proposals to section 706-623 Terms of probation and section 712-1255 Conditional Discharge account for the new misdemeanor offense of Possessing a dangerous drug in the second degree and achieves code consistency if the Legislature does create the new offenses of Possessing a dangerous drug.

Chapter 804: Bail and Bonds (Pretrial Release)

The Committee recommends amendment of section 804-7.1 Conditions of release on bail, recognizance, or supervised release to ensure that release conditions, specifically electronic monitoring and surveillance, remain available to all criminal defendants. If the cost of electronic monitoring and surveillance is assessed to defendants, truly indigent defendants that cannot afford the monetary cost will remain incarcerated. This amendment specifies the cost of electronic monitoring or surveillance is borne by the DCR.

The Committee also recommends amending section 804-7. Act 179, Session Laws of Hawai'i 2019 required the creation of a statewide program that permits the posting of monetary bail seven-days-a-week for defendants who remain in the custody of the DCR. A program is not yet in place, and with this amendment, the Legislature can specify a time period for compliance with this statute.

Issues without Recommendations

The legislative recommendations are one part of the work of the Committee. Also presented in this report are subcommittee discussions that did not result in legislative recommendations but may nevertheless spark the interest of the Legislature. These issues did not ultimately reach supermajority approval of the Committee, but were worthy of research and analysis, and provide insight into the current concerns of the community. The discussions of these issues are presented in this report in Section VI "Issues without Recommendations." The Committee hopes the inclusion of this section will be helpful to the Legislature if/when constituent groups seek changes to the Penal Code related to these issues.

VI. Legislative Proposals

Chapter 701: Preliminary Provisions

§ 701-107 Grades and classes of offenses. (1) An offense defined by this Code or by any other statute of this State for which a sentence of imprisonment is authorized constitutes a crime. Crimes are of three grades: felonies, misdemeanors, and petty misdemeanors. Felonies include murder in the first and second degrees, attempted murder in the first and second degrees, and the following three classes: class A, class B, and class C.

(2) A crime is a felony if it is so designated in this Code or in a statute other than this Code enacted subsequent thereto, or if persons convicted thereof may be sentenced to imprisonment for a term which is in excess of one year.

(3) A crime is a misdemeanor if it is so designated in this Code or in a statute other than this Code enacted subsequent thereto, or if it is defined in a statute other than this Code which provides for a term of imprisonment the maximum of which is one year.

(4) A crime is a petty misdemeanor if it is so designated in this Code or in a statute other than this Code enacted subsequent thereto, or if it is defined by a statute other than this Code that provides that persons convicted thereof may be sentenced to imprisonment for a term not to exceed thirty days.

(5) An offense defined by this Code or by any other statute of this State constitutes a violation if it is so designated in this Code or in the law defining the offense or if no other sentence than a fine, or fine and forfeiture or other civil penalty, is authorized upon conviction or if it is defined by a statute other than this Code which provides that the offense shall not constitute a crime. A violation does not constitute a crime, and conviction of a violation shall not give rise to any civil disability based on conviction of a criminal offense.

(6) Any offense declared by law to constitute a crime, without specification of the grade thereof or of the sentence authorized upon conviction, is a misdemeanor.

(7) An offense defined by any statute of this State other than this Code shall be classified as provided in this section and the sentence that may be imposed upon conviction thereof shall hereafter be governed by this Code.

Comment:

The existing commentary on section 701-107 notes that this section's "main thrust . . . is to govern the classification of offenses defined outside the Code." However, there are several felony offenses currently "outside the Code." *See e.g.*, HRS section 11-412 regarding campaign fraud as a class C felony, enacted in 2010; section 132D-14 regarding fireworks offenses as a class C felony, enacted in 1994; section 161-28 regarding bribery of poultry inspectors as a class C felony, enacted in 1969; sections 329-41 and 329-42 regarding prohibited acts involving the Uniform Controlled Substances Act punishable as a class C felony, enacted in 1972; section 329C-2 regarding distribution of an imitation controlled substance to a minor punishable as a class C felony, enacted in 1984; section 329D-19 regarding alteration or falsification of medical cannabis dispensary records punishable as a class C felony, enacted in 2015; section 428-1302 regarding violations of the Uniform Limited Liability Company Act punishable as a class C felony, enacted in 1996; section 480-16 regarding antitrust and monopoly activity punishable "by imprisonment not exceeding three years", enacted in 1961; section 480E-12 regarding mortgage rescue fraud punishable as a class C felony, enacted in 2012; section 485A-508 regarding securities fraud punishable as a class C felony up to a class A felony, depending on the amount of monetary loss, enacted in 2006; section 846E-9 regarding failure to comply with sex offender registration requirements punishable as a class C felony, enacted in 1997.

Additionally, the rationale is unclear as to why the proposed language was in subsections (3) and (4) regarding misdemeanor and petty misdemeanor offenses but omitted from subsection (2) regarding felony offenses. Thus, the proposed amendment to section 701-107 is made for the purposes of clarity and consistency.

§ **701-108 Time limitations.** (1) A prosecution for murder, murder in the first and second degrees, attempted murder, attempted murder in the first and second degrees, criminal conspiracy to commit murder in any degree, criminal solicitation to commit murder in any degree, sexual assault in the first and second degrees, sex trafficking, and continuous sexual assault of a minor under the age of fourteen years may be commenced at any time.

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

(a) A prosecution for manslaughter where the death was not caused by the operation of a motor vehicle must be commenced within ten years after it is committed;

(b) A prosecution for a class A felony must be commenced within six years after it is committed;

(c) A prosecution for any felony under part IX of chapter 708 must be commenced within five years after it is committed;

(d) A prosecution for any other felony must be commenced within three years after it is committed;

(e) A prosecution for a misdemeanor [~~or parking violation~~] must be commenced within two years after it is committed; and

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

(3) If the period prescribed in subsection (2) has expired, a prosecution may nevertheless be commenced for:

(a) Any offense an element of which is fraud, deception as defined in section 708-800, or a breach of fiduciary obligation or the offense of medical assistance fraud under section 346-43.5, within three years after discovery of the offense by an aggrieved party or by a person who has a legal duty to represent an aggrieved party and who is oneself not a party to the offense, but in no case shall this provision extend the period of limitation by more than six years from the expiration of the period of limitation prescribed in subsection (2);

(b) Any offense based on misconduct in office by a public servant at any time when the defendant is in public office or employment or within two years thereafter, but in no case shall this provision extend the period of limitation by more than three years from the expiration of the period of limitation prescribed in subsection (2); and

(c) Any felony offense involving evidence containing deoxyribonucleic acid from the offender, if a test confirming the presence of deoxyribonucleic acid is performed prior to expiration of the period of limitation prescribed in subsection (2), but in no case shall this provision extend the period of limitation by more than ten years from the expiration of the period of limitation prescribed in subsection (2).

(4) An offense is committed either when every element occurs, or, if a legislative purpose to prohibit a continuing course of conduct plainly appears, at the time when the course of conduct or the defendant's complicity therein is

terminated. Time starts to run on the day after the offense is committed.

(5) A prosecution is commenced either when an indictment is found or a complaint filed, or when an arrest warrant or other process is issued, provided that such warrant or process is executed without unreasonable delay.

(6) The period of limitation does not run:

(a) During any time when the accused is continuously absent from the State or has no reasonably ascertainable place of abode or work within the State, but in no case shall this provision extend the period of limitation by more than four years from the expiration of the period of limitation prescribed in subsection (2);

(b) During any time when a prosecution against the accused for the same conduct is pending in this State; or

(c) For any felony offense under chapter 707, part V or VI, during any time when the victim is alive and under eighteen years of age.

(7) As used in this section, "public servant" shall have the same meaning as in section 710-1000.

Comment:

The applicable time period to commence a prosecution for a parking violation is two years as noted in section (2)(e), while the applicable time period to commence a prosecution for a petty misdemeanor or a violation other than a parking violation is one year as noted in section (2)(f). This discrepancy has been in effect for at least 24 years. During this time, the Committee is not aware of a single instance of a parking violation prosecution being brought beyond one year after it was committed. Whatever the original justification for a two-year period may have been, it no longer appears to be warranted. The Committee finds that reducing the time period to commence a prosecution for a parking violation from two years to one year will not significantly impact parking violation prosecutions and will allow parking violations to be treated in the same manner as other violations.

§ 701-116 Proving applicability of the Code. When the application of the Code depends on the finding of a fact which is not required to be found beyond a reasonable doubt:

(1) The burden of proving the fact is on the prosecution or defendant, depending on whose interest or contention will be furthered if the finding should be made; and

(2) Unless there is any authority to the contrary, t[T]he fact must be proved by a preponderance of the evidence.

Comment:

The Committee recognizes there may be instances where the appropriate burden of proof must be made by "clear and convincing evidence" instead of the lower "preponderance" standard. In 1999, the Hawai'i Supreme Court, in *State v. Kotis*, 91 Hawai'i 319, 340, 984 P.2d 78, 99 (1999), held that due process under article I, section 5 of the state constitution requires "that an order for the nonemergency involuntary administration of antipsychotic medications to a criminal defendant must be based upon facts found by clear and convincing evidence." Accordingly, the proposed amendment to section 701-116 is made for the purposes of clarity and consistency.

Chapter 705: Inchoate Crimes

§ 705-501 Criminal attempt; attempting to aid another. (1) A person who engages in conduct intended to aid another to commit a crime is guilty of an attempt to commit the crime, although the crime is not committed or attempted by the other person, provided ~~his~~ the person's conduct would establish ~~his~~ their complicity under sections 702-222 through 702-226 if the crime were committed or attempted by the other person.

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

§ 705-511 Immunity, irresponsibility, or incapacity of a party to criminal solicitation. (1) A person shall not be liable under section 705-510 for criminal solicitation of another if under sections 702-224(1) and (2) and 702-225(1) ~~he~~ they would not be legally accountable for the conduct of the other person.

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

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

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

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

(d) ~~He~~ The person does not have the state of mind sufficient for the commission of the offense in question.

(3) It is not a defense to a prosecution under section 705-510 that the defendant is, by definition of the offense, legally incapable in an individual capacity of committing the offense solicited.

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

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

(2) ~~He~~ The person or another person with whom ~~he conspired~~ they conspire commits an overt act in pursuance of the conspiracy.

§ 705-521 Scope of conspiratorial relationship. If a person guilty of criminal conspiracy, as defined in section 705-520, knows that a person with whom ~~he conspires~~ they conspire to commit a crime has conspired with another person or persons to commit the same crime, ~~he is~~ the person is guilty of conspiring to commit the crime with such other person or persons, whether or not ~~he knows~~ they know their identity.

§ 705-523 Immunity, irresponsibility, or incapacity of a party to criminal conspiracy. (1) A person shall not be liable under section 705-520 for criminal conspiracy if under sections 702-224(1) and (2) and 702-225(1) ~~he~~ the person would not be legally accountable for the conduct of the other person.

(2) It is not a defense to a prosecution under section 705-520 that a person with whom the defendant conspires could not be guilty of committing the crime because:

(a) ~~He~~ The person is, by definition of the offense, legally incapable in an individual capacity of committing the offense;

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

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

(d) ~~He~~ The person does not have the state of mind sufficient for the commission of the offense in question.

(3) It is not a defense to a prosecution under section 705-520 that the defendant is, by definition of the offense, legally incapable in an individual capacity of committing the offense that is the object of the conspiracy.

Comment:

The Committee proposes amendments to sections 705-501, 705-511, 705-520, 705-521, and 705-523 to make this Chapter gender neutral and consistent with the remainder of the Penal Code.

Chapter 704: Penal Responsibility and Fitness to Proceed

§ 704-404 Examination of defendant with respect to physical or mental disease, disorder, or defect excluding fitness to proceed.

(1) Whenever there is reason to doubt the defendant's fitness to proceed, the court may immediately suspend all further proceedings in the prosecution; provided that for any defendant not subject to an order of commitment to the director of health for the purpose of the examination, neither the right to bail nor proceedings pursuant to chapter 804 shall be suspended. If a trial jury has been empaneled, it shall be discharged or retained at the discretion of the court. The discharge of the trial jury shall not be a bar to further prosecution.

(2) Upon suspension of further proceedings in the prosecution:

(a) In cases where the defendant is charged with a petty misdemeanor not involving violence or attempted violence, if a court-based certified examiner is available, the court shall appoint the court-based certified examiner to examine and provide an expedited report solely upon the issue of the defendant's capacity to understand the proceedings against the defendant and defendant's ability to assist in the defendant's own defense. The court-based certified examiner shall file the examiner's report with the court within two days of the appointment of the examiner, or as soon thereafter is practicable. A hearing shall be held to determine if the defendant is fit to proceed within two days of the filing of the report, or as soon thereafter as is practicable;

(b) In all other nonfelony cases, and where a court-based certified examiner is not available in cases under paragraph (a), the court shall appoint one qualified

examiner to examine and report upon the defendant's fitness to proceed. The court may appoint as the examiner either a psychiatrist or a licensed psychologist designated by the director of health from within the department of health; and

(c) In felony cases, the court shall appoint three qualified examiners to examine and report upon the defendant's fitness to proceed. The court shall appoint as examiners psychiatrists, licensed psychologists, or qualified physicians; provided that one of the three examiners shall be a psychiatrist or licensed psychologist designated by the director of health from within the department of health.

All examiners shall be appointed from a list of certified examiners as determined by the department of health. The court, in appropriate circumstances, may appoint an additional examiner or examiners. The examination may be conducted while the defendant is in custody or on release or, in the court's discretion, when necessary the court may order the defendant to be committed to a hospital or other suitable facility for the purpose of the examination for a period not exceeding thirty days, or a longer period as the court determines to be necessary for the purpose. The court may direct that one or more qualified physicians or psychologists retained by the defendant be permitted to witness the examination. As used in this section, the term "licensed psychologist" includes psychologists exempted from licensure by section 465-3(a)(3) and "qualified physician" means a physician qualified by the court for the specific evaluation ordered.

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

(4) For defendants charged with felonies, the examinations for fitness to proceed under this section and penal

responsibility under section 704-407.5 shall be conducted separately unless a combined examination has been ordered by the court upon a request by the defendant or upon a showing of good cause to combine the examinations. The report of the examination for fitness to proceed shall be separate from the report of the examination for penal responsibility unless a combined examination has been ordered. For defendants charged with offenses other than felonies, a combined examination is permissible when ordered by the court.

(5) Except in the case of an examination pursuant to subsection (2)(a), the report of the examination for fitness to proceed shall include the following:

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

(b) A diagnosis of the physical or mental condition of the defendant;

(c) An opinion as to the defendant's capacity to understand the proceedings against the defendant and to assist in the defendant's own defense;

(d) An assessment of the risk of danger to the defendant or to the person or property of others for consideration and determination of the defendant's release on conditions; and

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

(6) If the examination cannot be conducted by reason of the unwillingness of the defendant to participate in the examination, the report shall so state and shall include, if possible, an opinion as to whether the unwillingness of the defendant was the result of physical or mental disease, disorder, or defect.

(7) A copy of the report of the examination, including any supporting documents, shall be filed with the clerk of the court.

(8) Any examiner shall be permitted to make a separate explanation reasonably serving to clarify the examiner's opinion.

(9) The court shall obtain all existing relevant medical, mental health, social, police, and juvenile records, including those expunged, and other pertinent records in the custody of public agencies, notwithstanding any other statute, and make the records available for inspection by the examiners in hard copy

or digital format. The court may order that the records so obtained be made available to the prosecuting attorney and counsel for the defendant in either format, subject to conditions the court determines appropriate; provided that juvenile records shall not be made available unless constitutionally required. [~~No further disclosure of records shall be made except as permitted by law.~~] If, pursuant to this section, the court orders the defendant committed to a hospital or other suitable facility under the control of the director of health, then the county police departments shall provide to the director of health and the defendant copies of all police reports from cases filed against the defendant that have been adjudicated by the acceptance of a plea of guilty or no contest, a finding of guilt, acquittal, acquittal pursuant to section 704-400, or by the entry of plea of guilty or no contest made pursuant to chapter 853; provided that the disclosure to the director of health and the defendant does not frustrate a legitimate function of the county police departments, with the exception of expunged records, records of or pertaining to any adjudication or disposition rendered in the case of a juvenile, or records containing data from the United States National Crime Information Center. The county police departments shall segregate or sanitize from the police reports information that would result in the likely or actual identification of individuals who furnished information in connection with its investigation, or who were of investigatory interest. The department of corrections and rehabilitation and the department of health may disclose all relevant records between themselves regarding a defendant moved between departments. No further disclosure of records shall be made except as provided by law.

(10) [~~All~~] Within fourteen days of receipt of a court order, excluding intermediate Saturdays, Sundays, or holidays designated pursuant to section 8-1, or a longer time as the court may prescribe, all public agencies, persons, or other entities in possession of relevant medical, mental health, social, police, and juvenile records, including those expunged, and any other pertinent records of a defendant ordered to be examined under this chapter, shall provide those records to the court[~~,~~] in accordance with the terms of the order, notwithstanding any other state statute[~~.~~] and without requiring a signed consent from the defendant if the order so provides. An order may provide for a continuing obligation to provide records to the court created or received by public agencies, persons, or other entities after the initial provision of records to the court. Additionally, all public agencies shall make records available to an appointed examiner for inspection at the location where the records are maintained upon request

and presentment of a court order authorizing the examiner to make the inspection, notwithstanding any other state statute and without requiring a signed consent of the defendant if the order so provides."

(11) The compensation of persons making or assisting in the examination, other than those retained by a nonindigent defendant, who are not undertaking the examination upon designation by the director of health as part of their normal duties as employees or contractors of the State or a county, shall be paid by the judiciary in the amount of $2,000, which amount includes compensation for the examination, the drafting of the report, and any consultation, preparation, testimony, and attendance in court.

§ 704-406 Effect of finding of unfitness to proceed and regained fitness to proceed.

(1) If the court determines that the defendant lacks fitness to proceed, the proceeding against the defendant shall be suspended, except as provided in sections 704-407 and 704 421, and the court shall commit the defendant to the custody of the director of health to be placed in an appropriate institution for detention, assessment, care, and treatment; provided that:

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

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

If the court is satisfied that the defendant may be released on conditions without danger to the defendant or to another or risk of substantial danger to property of others, the court shall order the defendant's release, which shall continue at the discretion of the court, on conditions the court determines necessary; provided that the release on conditions of a defendant charged with a misdemeanor not involving violence or attempted violence shall continue for no longer than one hundred twenty days. A copy of all reports filed pursuant to section 704-404 shall be attached to the order of commitment or order of release on conditions that is provided to the department of health. When the defendant is committed to the custody of the director of health for detention, assessment, care, and treatment, the county police departments shall provide to the

director of health and the defendant copies of all police reports from cases filed against the defendant that have been adjudicated by the acceptance of a plea of guilty or nolo contendere, a finding of guilt, acquittal, acquittal pursuant to section 704-400, or by the entry of a plea of guilty or nolo contendere made pursuant to chapter 853; provided that the disclosure to the director of health and the defendant does not frustrate a legitimate function of the county police departments; provided further that expunged records, records of or pertaining to any adjudication or disposition rendered in the case of a juvenile, or records containing data from the United States National Crime Information Center shall not be provided. The county police departments shall segregate or sanitize from the police reports information that would result in the likely or actual identification of individuals who furnished information in connection with the investigation or who were of investigatory interest. The department of corrections and rehabilitation and the department of health may disclose all relevant records between themselves regarding a defendant moved between departments. No further disclosure of records shall be made except as provided by law.

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

(3) The department of health shall periodically report to the court on the defendant's compliance with treatment and fitness restoration. When the court, on its own motion or upon the application of the director of health, the prosecuting attorney, or the defendant, determines, after a hearing if a hearing is requested, [~~has reason to believe~~] that the defendant has regained fitness to proceed, the penal proceeding shall be resumed. If requested by the prosecuting attorney or the defendant, the court may appoint one or more qualified examiner(s) as set forth below to examine and report upon the physical and mental condition of the defendant to assist the court in making the determination of fitness. If an examination is ordered, for a defendant charged with the offense of murder in the first or second degree, attempted murder in the first or second degree, or a class A felony, the court shall appoint three qualified examiners and may appoint in all other cases one qualified examiner[~~, to examine and report upon the physical and mental condition of the defendant. In cases in which the defendant has been charged with murder in the first or second~~

~~degree, attempted murder in the first or second degree, or a class A felony, the court shall appoint as examiners at least one psychiatrist and at least one licensed psychologist. The third examiner may be a psychiatrist, licensed psychologist, or qualified physician.~~] When appointing three examiners, the court shall appoint as examiners psychiatrists, licensed psychologists, or qualified physicians, provided that o[~~O~~]ne of the three examiners shall be a psychiatrist or licensed psychologist designated by the director of health from within the department of health. In all other cases, the one qualified examiner shall be a psychiatrist or licensed psychologist designated by the director of health from within the department of health. The court, in appropriate circumstances, may appoint an additional examiner or examiners. All examiners shall be appointed from a list of certified examiners as determined by the department of health. [~~After a hearing, if a hearing is requested, if the court determines that the defendant has regained fitness to proceed, the penal proceeding shall be resumed and the defendant shall no longer be committed to the custody of the director of health. In cases where a defendant is charged with the offense of murder in the first or second degree, attempted murder in the first or second degree, or a class A felony, upon the request of the prosecuting attorney or the defendant, and in consideration of information provided by the defendant's clinical team, the court may order that the defendant remain in the custody of the director of health, for good cause shown, subject to bail or until a judgment on the verdict or a finding of guilt after a plea of guilty or nolo contendere. Thereafter, the court may consider a request from the director of health to rescind its order maintaining the defendant in the director's custody, for good cause shown.~~] As used in this section, the term "qualified physician" means a physician qualified by the court for the specific evaluation ordered. If, [~~however,~~] after a determination that the defendant has regained fitness, the court is of the view that so much time has elapsed since the commitment or release on conditions of the defendant that it would be unjust to resume the proceeding, the court may dismiss the charge and:

(a) Order the defendant to be discharged;

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

(c) Subject to section 334-121 regarding assisted community treatment criteria, order the defendant to

be released on conditions the court determines necessary.

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

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

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

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

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

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

([~~7~~]5) If a defendant who has either been committed to the custody of the director of health for a limited period pursuant to subsection (1)(b) or released on conditions for a limited period pursuant to subsection (1) is not found fit to proceed prior to the expiration of the commitment, the charge for which the defendant was committed for a limited period shall be dismissed. Upon dismissal of the charge, the defendant shall be released from custody or discharged from the release on conditions, whichever is applicable, unless the defendant is subject to prosecution for other charges or subject to section 334-60.2 regarding involuntary hospitalization criteria, in

which case the court shall order the defendant's commitment to the custody of the director of health to be placed in an appropriate institution for detention, care, and treatment. Within a reasonable time following any other commitment or release on conditions under subsection (1), the director of health shall report to the court on whether the defendant presents a substantial likelihood of becoming fit to proceed in the future. The court, in addition, may appoint a panel of three qualified examiners in felony cases or one qualified examiner in nonfelony cases to make a report as to whether the defendant presents a substantial likelihood of becoming fit to proceed in the future. The examination and report shall comply with subsections (3) and (4) above. If, following the receipt of the report(s), the court determines, after a hearing, if a hearing is requested, that the defendant probably will remain unfit to proceed, the court may dismiss the charge and:

(a) Release the defendant; or

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

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

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

~~(b) Subject to section 334-60.2 regarding involuntary hospitalization criteria, order the defendant to be committed to the custody of the director of health to~~

~~be placed in an appropriate institution for detention, care, and treatment.~~

§ 704-407.5 Examination of defendant with respect to physical or mental disease, disorder, or defect excluding penal responsibility.

(1) Whenever the defendant has filed a notice of intention to rely on the defense of physical or mental disease, disorder, or defect excluding penal responsibility, or there is reason to believe that the physical or mental disease, disorder, or defect of the defendant will or has become an issue in the case, the court may order an examination as to the defendant's physical or mental disease, disorder, or defect at the time of the conduct alleged.

Whenever there is reason to believe that the physical or mental disease, disorder, or defect of the defendant will or has become an issue in the case, the court may enter into an agreement with the parties at any stage of the proceeding to divert the case into an evaluation of the defendant, treatment of the defendant, including residential or rehabilitation treatment; or any other course or procedure, including diversion into specialized courts. Such agreements may include in-court clinical evaluations.

(2) For those cases not diverted by an agreement pursuant to subsection (1), the court shall appoint three qualified examiners for class A and class B felonies, as well as for class C felonies involving violence or attempted violence, and one qualified examiner in nonfelony cases to examine and report upon the physical or mental disease, disorder, or defect of the defendant at the time of the conduct. For class C felonies not involving violence or attempted violence, the court may appoint one or three qualified examiners to examine and report upon the physical or mental disease, disorder, or defect of the defendant at the time of the conduct. In cases where the court appoints three examiners, the court shall appoint as examiners psychiatrists, licensed psychologists, or qualified physicians; provided that one of the three examiners shall be a psychiatrist or licensed psychologist designated by the director of health from within the department of health. In nonfelony cases and class C felonies not involving violence or attempted violence where one examiner is appointed, the court may appoint as examiners either a psychiatrist or a licensed psychologist. The examiner may be designated by the director of health from within the department of health. All examiners shall be appointed from a list of certified examiners as determined by the department of health. The court, in appropriate circumstances, may appoint an

additional examiner or examiners. The court may direct that one or more qualified physicians or psychologists retained by the defendant be permitted to witness the examination. As used in this section, the term "licensed psychologist" includes psychologists exempted from licensure by section 465-3(a)(3) and "qualified physician" means a physician qualified by the court for the specific evaluation ordered.

(3) An examination performed under this section may employ any method that is accepted by the professions of medicine or psychology for the examination of those alleged to be affected by a physical or mental disease, disorder, or defect; provided that each examiner shall form and render diagnoses and opinions upon the physical and mental condition of the defendant independently from the other examiners, and the examiners, upon approval of the court, may secure the services of clinical psychologists and other medical or paramedical specialists to assist in the examination and diagnosis. The examination shall comply with the other provisions of this section and may be conducted utilizing telehealth, as that term is defined in section 453-1.3(j), at the request of the examiner. The department of health and the department of corrections and rehabilitation shall provide secure access to defendants in their custody for any examination requested to be conducted utilizing telehealth.

(4) For defendants charged with felonies, the examinations for fitness to proceed under section 704-404 and penal responsibility under this section shall be conducted separately unless a combined examination has been ordered by the court upon a request by the defendant or upon a showing of good cause to combine the examinations. The report of the examination for fitness to proceed shall be separate from the report of the examination for penal responsibility unless a combined examination has been ordered. For defendants charged with offenses other than felonies, a combined examination is permissible when ordered by the court.

(5) The court may order the examination to occur no sooner than one hundred twenty days of a finding of unfit to proceed under section 704-404 upon a showing of good cause.

(6) The report of the examination for penal responsibility shall include the following:

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

(b) A diagnosis of the physical or mental condition of the defendant;

(c) An opinion as to the extent, if any, to which the capacity of the defendant to appreciate the wrongfulness of the defendant's conduct or to conform

the defendant's conduct to the requirements of law was impaired at the time of the conduct alleged;

(d) When directed by the court, an opinion as to the capacity of the defendant to have a particular state of mind that is required to establish an element of the offense charged; and

(e) Where more than one examiner is appointed, a statement that the diagnosis and opinion rendered were arrived at independently of any other examiner, unless there is a showing to the court of a clear need for communication between or among the examiners for clarification. A description of the communication shall be included in the report. After all reports are submitted to the court, examiners may confer without restriction.

(7) If the examination cannot be conducted by reason of the unwillingness of the defendant to participate in the examination, the report shall so state and shall include, if possible, an opinion as to whether the unwillingness of the defendant was the result of physical or mental disease, disorder, or defect.

(8) Three copies of the report of the examination, including any supporting documents, shall be filed with the clerk of the court, who shall cause copies to be delivered to the prosecuting attorney and to counsel for the defendant.

(9) Any examiner shall be permitted to make a separate explanation reasonably serving to clarify the examiner's diagnosis or opinion.

(10) The court shall obtain all existing relevant medical, mental health, social, police, and juvenile records, including those expunged, and other pertinent records in the custody of public agencies, notwithstanding any other statute, and make the records available for inspection by the examiners in hard copy or digital format. The court may order that the records so obtained be made available to the prosecuting attorney and counsel for the defendant in either format, subject to conditions the court determines appropriate; provided that juvenile records shall not be made available unless constitutionally required. The department of corrections and rehabilitation and the department of health may disclose all relevant records between themselves regarding a defendant moved between departments. No further disclosure of records shall be made except as permitted by law.

(11) ~~[All~~] Within fourteen days of receipt of a court order, excluding intermediate Saturdays, Sundays, or holidays designated pursuant to section 8-1, or a longer time as the court may prescribe, all public agencies, persons, or other

entities in possession of relevant medical, mental health, social, police, and juvenile records, including those expunged, and any other pertinent records of a defendant ordered to be examined under this chapter, shall provide those records to the court[~~,~~] in accordance with the terms of the order, notwithstanding any other state statute[~~.~~] and without requiring a signed consent from the defendant if the order so provides. An order may provide for a continuing obligation to provide records to the court created or received by public agencies, persons, or other entities after the initial provision of records to the court. Additionally, all public agencies shall make records available to an appointed examiner for inspection at the location where the records are maintained upon request and presentment of a court order authorizing the examiner to make the inspection, notwithstanding any other state statute and without requiring a signed consent from the defendant if the order so provides.

(12) The compensation of persons making or assisting in the examination, other than those retained by a nonindigent defendant, who are not undertaking the examination upon designation by the director of health as part of their normal duties as employees of the State or a county, shall be paid by the judiciary in the amount of $2,000, which amount includes compensation for the examination, the drafting of the report, and any consultation, preparation, testimony, and attendance in court.

(13) The time during which completion of an examination pursuant to this section is pending shall be excluded in computing the time for trial commencement.

Comment:

The proposed legislative changes to sections 704-404, 704-406, and 704-407.5 seek to modernize and expedite the transfer of information, and patients, between the DOH and the DCR.

Collection of Documents

When a court orders the mental examination of a criminal defendant, appointed forensic examiners conduct in-person (or video) interviews of the criminal defendant and perform a document review of that defendant's treatment history. To make the records review more efficient, this legislative proposal addresses the question over whether DOH and DCR may transmit records between themselves is resolved with an express authorization in sections 704-404(9), 704-406(1), and 704-407.5(10).

To ensure timely production of records to the Judiciary's Adult Client Service Branch ("ACSB"), a deadline of 14 days following receipt of a court order to produce records to ACSB (or such longer time as the court may prescribe) has been added to sections 704-404(10) and 704-407.5(11). Under current law, this subsection only applies to public agencies—this proposal expands the reach of this subsection to all persons or entities in possession of relevant documentation. For consistency with section 704-404(9) and 704-407.5(10), it further provides for the disclosure of expunged records. To address issues of records produced or received after the initial production of documents, the proposal authorizes judges to order that there is a continuing obligation to produce records created or received after the initial production. This, however, may create additional administrative burdens on those ordered to produce records.

Under HIPAA regulations, a covered entity can disclose records without patient authorization "[i]n response to an order of a court . . . , provided that the covered entity discloses only the protected health information expressly authorized by such order[.]" 45 C.F.R. § 164.512(e). The proposal amends sections 704-404(10) and 704-407.5(11) to expressly authorize the court to order that records be provided without the consent of the defendant.

The proposal expressly authorizes examiners to inspect records at public agencies on site upon presentment of a court order. This would resolve any ambiguity in the statute, and also provide for a failsafe for examiners to review records of public agencies if there is a delay in production to ACSB.

DCR expressed concern about establishing a deadline for the production of records to ACSB and to on-site inspection due to lack of resources. DCR was asked if an appropriation could alleviate concerns. DCR requested appropriations of $5,000 for a designation workstation consisting of an internet line and a computer that would need to be replaced every 3 years, and $6,700 annually per user of the workstation for a license for a total of $11,700 for fiscal year 2026-2027. The committee recommends inclusion in any proposed bill of an appropriation in that amount to DCR for those purposes and a similar amount to DOH for the fiscal year 2026-2027.

Telehealth

In the interest of efficient mental health examinations of criminal defendants, the additions for sections 704-404(3) and 704-407.5(3) codify the existing practice of allowing examination by telehealth. The DOH and DCR have already undertaken measures to permit telehealth examinations. The Committee recommends inclusion in any proposed bill an appropriation to both DCR and DOH in order to facilitate the use of telehealth in their respective facilities.

Fitness Restoration (HRS section 704-406)

Currently there are several individuals held in the custody of the DOH who are awaiting a panel examination to determine if they have regained fitness to proceed in their criminal action. With the amendments to section 704-406 in 2016 under Act 198, the court was, for the first time, required to order a panel of one or three examiners in each of these cases to determine if a defendant had regained fitness to proceed. At the time, the legislature found that it was "in the best interest of the defendants for the examination process to proceed in a timely, expedient manner by codifying procedures for appointing examiners for reevaluation of fitness." However, those amendments foreclosed any other avenue for the court to make a determination that a defendant understood the proceedings against them and could assist in their own defense, regardless of other evidence available to the court.

The revisions proposed attempt to address some of the overcrowding at the State Hospital by reverting to the pre-2016 provisions of section 706-406(3) and thereby permitting the court, with the agreement of the parties, to hear evidence and make a determination of fitness without the necessity of a panel examination. This revision would allow the court and the parties to reinstate the criminal action when the court determines, after a hearing, that a defendant is fit to proceed. Should either party request an examination, then a panel examination may be ordered by the court to aid in its determination. As noted, these revisions would reinstate the practice that was occurring prior to Act 198 SLH2016 and will likely eliminate unnecessary delays in those cases where the State, the defense, and the court agree that a defendant has the capacity to understand the proceedings against them and to assist in their own defense. In addition, eliminating unnecessary panel examinations will aid in the timeliness of the examination for those defendants that do require panel examinations.

The revisions proposed to section 704-406(3) are to address the fact that currently the statute only requires a report from the DOH on whether there is a substantial likelihood of the defendant becoming fit to proceed in the future. These reports are currently required for those committed or released on conditions (those who are found unfit but who may be released without danger) "within a reasonable time."[1] There is no statutory obligation for a report from DOH on any other issue or within any other timeframe. The court itself currently orders DOH to provide reports to the court in the original determination of unfitness order and subsequently at each fitness review hearing regarding the defendant's compliance with treatment and fitness restoration. This provision merely puts those court orders into statute to make

[1] This does not include those who are specifically committed (or released) for a limited period of time under section 704-406(1)(b).

clear that DOH is required to provide reports to the court regardless of the status of the defendant.

The other revisions to section 704-406(3) are proposed to make section 704-406(3) consistent with all the other provision of Chapter 704 wherein a three-panel examination is ordered (sections 704-404, 704-407.5, 704-411, and 704-413) by removing the requirement that one of the examiners be a psychiatrist for all "A" felony charges, murder, and attempted murder. After the enactment of Act 26 SLH2020, this section was the only remaining section that required a psychiatrist to be on the panel. This has made it difficult to maintain continuity in the cases where panel examinations are ordered along the continuum of the criminal case and has further exacerbated the delays for section 704-406 examinations as there is only one psychiatrist on the DOH approved list for the First Circuit. The argument for maintaining a psychiatrist on the panel stems from the belief that only psychiatrists can opine on whether a defendant is suffering from an organic brain issue (trauma/damage). However, practically speaking, all examiners are permitted to request, and those requests are unfailingly granted, a neuropsychological examination of the defendant in order for them to render an opinion. This obviates the need for mandating a psychiatrist on the panel.

The last revision to section 704-406(3) reverses unnecessary revisions made in Act 198 SLH2016. Prior to Act 198, where a defendant who had been unfit for a period of time and committed to the custody of the DOH had stabilized and, in the opinion of the panel examiners and/or the court, had "regained fitness," and was, at that time, prepared to either proceed via jury-waived trial on the penal responsibility defense, or to change their plea, then the court would make the determination of fitness just prior to the trial or entry of the plea. Therefore, a defendant would remain in the custody of the director of health until a finding of fitness and the simultaneous "judgment on the verdict or finding of guilt after a plea of guilty or nolo contendere" regardless of charge. The option of keeping a defendant who would likely decompensate if transferred to the custody of the DCR pending the imminent resolution of their case should not be restricted to those charged with "A" felonies and above. Implicitly requiring those lower level offenders to be transferred needlessly increases the necessity for subsequent examinations for fitness (i.e. if a defendant decompensates while awaiting their change of plea hearing date, a new panel examination would be required before going forward with the change of plea hearing).

The amendments to sections 704-406(4)-(6) are proposed for efficiency and consistency. The language is consistent with the language in sections 704-411(3) and 704-714(1) which reference back to section 704-404 for the examinations ordered in those sections. The proposed revisions have no substantive effect on the examination, content of the report, or the compensation provided to the examiners.

The revisions to the remaining sections 704-406(7) and (8) condense two duplicative subsections into one new subsection 704-406(5) that applies to both committed defendants and those defendants that were released on conditions. The proposed revisions have no substantive effect on those provisions.

Chapter 706: Disposition of Convicted Defendants

§ 706-623 Terms of probation. (1) When the court has sentenced a defendant to be placed on probation, the period of probation shall be as follows, unless the court enters the reason therefor on the record and sentences the defendant to a shorter period of probation:

(a) Ten years upon conviction of a class A felony;

(b) Five years upon conviction of a class B or class C felony under part II, V, or VI of chapter 707, chapter 709, and part I of chapter 712; ~~and~~

(c) ~~f~~Four years upon conviction of any other class B ~~or C~~ felony, a C felony under part III, IV, and VII, of chapter 707, and a C felony under part V and XIII of chapter 708;

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

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

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

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

(2) When a defendant who is sentenced to probation has previously been detained in any state or county correctional or other institution following arrest for the crime for which

sentence is imposed, the period of detention following arrest shall be deducted from the term of imprisonment if the term is given as a condition of probation. The pre-sentence report shall contain a certificate showing the length of such detention of the defendant prior to sentence in any state or county correctional or other institution, and the certificate shall be annexed to the official records of the defendant's sentence.

Comment:

The Pew Charitable Trust published a study in December 2020 on the variability of probation term lengths in the United States. Hawai'i ranked #1 with the longest average probation length of 59 months. Hawaii's 2019 Recidivism Study (the latest available) reveals that most probationers, if they violate their supervision terms, do so early in their probation terms. This data leads the Committee to conclude that if a probationer is no longer violating probation conditions after two years, they no longer need active supervision, and probation can be terminated. Accordingly, this recommendation allows a court to sentence non-violent Class C felony offenders to a probation term of three years (a reduction from the current four years).[2]

The Committee members discussed even shorter terms of probation such as two years since recidivism generally occurs with eighteen months of being placed on probation. The interest in shorter probation terms was counterbalanced with the need for time to complete services to address criminogenic needs such as long-term substance abuse/mental health treatment, and the interest to insure the payment of court-ordered restitution.

Several committee members raised concerns that shorter terms of probation would negatively affect the collection of restitution. During a probation term, the court has power and jurisdiction over a defendant to enforce payment, whereas upon termination of probation, victims would have to resort to private debt collection actions. Probation related collection of restitution is generally more effective than private debt collection, notwithstanding the availability of free standing orders of restitution. These committee members, therefore, were concerned that shorter terms of probation would shift the burden of enforcing court ordered restitution onto individual victims and result in lower collection rates.

The Committee was able to reach a consensus recommendation because actual probation supervision, despite the length specified by statute, can still

[2] Violent Class C felonies such as Assault in the Second Degree, Terroristic Threatening in the First Degree, Extortion in the Second Degree, Arson in the Third Degree, and most Class B felonies are still subject to probation terms of four years.

be modified on a case-by-case basis. If a probationer is successful in their rehabilitative efforts and satisfy the court-ordered terms and conditions, they are able to petition the court to terminate their probation supervision before the statutorily provided length is completed. If a probationer is struggling to satisfy their court-ordered terms and conditions, a Motion to Revoke Probation can be filed, and a court can extend probation or impose another term of probation to further monitor a probationer's rehabilitative efforts.

The Hawai'i Revised Statutes specify particular terms of probation on some offenses. These particular crimes include Habitual Property Crime (section 708-803) and Habitual Operation of a Vehicle Under the Influence of an Intoxicant (section § 291E-61.5). After discussion, the Committee decided to not make any recommendations outside the structure of *normal* probation codified in HRS Chap. 706 and give deference to the inherent legislative intent to punish these particular crimes differently.

Chapter 709: Offenses Against Family and Against Incompetents

§ 709-906 Abuse of family or household members; penalty.

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

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

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

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

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

(b) If the person who the police officer reasonably believes to have inflicted the abuse is eighteen years of age or older, the police officer lawfully shall order the person to leave the premises for a period of

separation, during which time the person shall not initiate any contact, either by telephone or in person, with the family or household member; provided that the person is allowed to enter the premises with police escort to collect any necessary personal effects. The period of separation shall commence when the order is issued and shall expire at 6:00 p.m. on the second business day following the day the order was issued; provided that the day the order is issued shall not be included in the computation of the two business days;

(c) If the person who the police officer reasonably believes to have inflicted the abuse is under the age of eighteen, the police officer may order the person to leave the premises for a period of separation, during which time the person shall not initiate any contact with the family or household member by telephone or in person; provided that the person is allowed to enter the premises with police escort to collect any necessary personal effects. The period of separation shall commence when the order is issued and shall expire at 6:00 p.m. on the second business day following the day the order was issued; provided that the day the order is issued shall not be included in the computation of the two business days. The order of separation may be amended at any time by a judge of the family court. In determining whether to order a person under the age of eighteen to leave the premises, the police officer may consider the following factors:

(i) Age of the person;

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

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

(d) All persons who are ordered to leave as stated above shall be given a written warning citation stating the date, time, and location of the warning and stating the penalties for violating the warning. A copy of the warning citation shall be retained by the police officer and attached to a written report which shall be submitted in all cases. A third copy of the warning citation shall be given to the abused person;

(e) If the person so ordered refuses to comply with the order to leave the premises or returns to the premises before the expiration of the period of separation, or if the person so ordered initiates any contact with the abused person, the person shall be placed under arrest for the purpose of preventing further physical abuse or harm to the family or household member; and

(f) The police officer shall seize all firearms and ammunition that the police officer has reasonable grounds to believe were used or threatened to be used in the commission of an offense under this section.

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

(a) For the first offense the person shall serve a minimum jail sentence of forty-eight hours; and

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

(6) It shall be a petty misdemeanor for a person to intentionally or knowingly strike, shove, kick, or otherwise touch a family or household member in an offensive manner; subject the family member or household member to offensive physical contact; or exercise coercive control, as defined in section 586-1, over a family or household member and the person shall be sentenced as provided in sections 706-640 and 706-663. Upon conviction and sentencing of the defendant, the court may order that the defendant immediately be incarcerated to serve the mandatory minimum sentence imposed; provided that the defendant may be admitted to bail pending appeal pursuant to chapter 804. The court may stay the imposition of the sentence if special circumstances exist.

(7) Whenever a court sentences a person or grants a motion for deferral pursuant to subsections (5) and (6), it shall also require that the offender first complete, within a specified time frame, an assessment at any available domestic violence intervention program, and then complete a domestic violence intervention or anger management course as determined by the domestic violence program, and, if the offense involved the presence or abuse of a minor, any available parenting classes ordered by the court. The court shall revoke the defendant's probation or set aside the defendant's deferred acceptance of guilty plea and enter an adjudication of guilt, if applicable, and sentence or resentence the defendant to the maximum term of incarceration if:

(a) The defendant fails to complete, within the specified time frame, any domestic violence intervention course, anger management course, or parenting classes ordered by the court; or

(b) The defendant violates any other term or condition of the defendant's probation or deferral imposed by the court; provided that, after a hearing on an order to show cause, the court finds that the defendant has failed to show good cause why the defendant has not timely completed the domestic violence intervention course, anger management course, or parenting classes, if applicable, or why the defendant violated any other term or condition of the defendant's sentence. However, the court may suspend any portion of a jail sentence, except for the mandatory sentences under subsection (5)(a) and (b), upon the condition that the defendant remain arrest-free and conviction-free or complete court-ordered intervention.

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

(9) Where the physical abuse consists of intentionally or knowingly causing bodily injury by impeding the normal breathing or circulation of the blood by:

(a) Applying pressure on the throat or the neck with any part of the body or a ligature;

(b) Blocking the nose and mouth; or

(c) Applying pressure to the chest, abuse of a family or household member is a class C felony; provided that infliction of visible bodily injury shall not be required to establish an offense under this subsection.

For the purposes of this subsection, "bodily injury" shall have the same meaning as in section 707-700.

(10) Where physical abuse occurs in the presence of a minor, as defined in section 706-606.4, and the minor is a family or household member less than fourteen years of age, abuse of a family or household member is a class C felony.

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

(12) The family or household member who has been physically abused or harmed by another person may petition the family court, with the assistance of the prosecuting attorney of the applicable county, for a penal summons or arrest warrant to

issue forthwith or may file a criminal complaint through the prosecuting attorney of the applicable county.

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

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

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

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

(17) When a person is ordered by the court to complete any domestic violence intervention course, anger management course, or parenting classes, that person shall provide adequate proof of compliance with the court's order. The court shall order a subsequent hearing at which the person is required to make an appearance, on a date certain, to determine whether the person has completed the ordered domestic violence intervention course, anger management course, or parenting classes. The court may waive the subsequent hearing and appearance where a court officer has established that the person has completed the intervention ordered by the court.

(18) Notwithstanding any provision of law to the contrary, the court may grant a deferred acceptance of guilty plea pursuant to chapter 853 for misdemeanor or petty misdemeanor offenses of abuse of a family or household member when the defendant:

(a) Has no prior conviction; or

(b) Has not been previously granted a deferred acceptance of guilty plea,

for any offense charged in family court under this section regardless of the final plea.

(19) For the purposes of this section:

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

"Family or household member':

(a) Means spouses or reciprocal beneficiaries, former spouses or reciprocal beneficiaries, persons in a dating relationship as defined under section 586-1, persons who have a child in common, parents, children, persons related by consanguinity, and persons jointly

residing or formerly residing in the same dwelling unit; and

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

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

Comment:

The offense of Abuse of family or household members is frequently charged by prosecutors in Hawaii. During the 2022-23 fiscal year, more than 600 charges were filed in the Circuit and Family Courts.

"Physically abuse" does not have a statutory definition. However, in *State v. Nomura*, 79 Hawai'i 413, 903 P.2d 718 (App. 1995), the Intermediate Court of Appeals defined the term "physical abuse" as "treatment that injures, hurts, or damages a person." *See also State v. Ornellas*, 79 Hawai'i 418, 903 P.2d 723 (App. 1995), (holding that a trial court's jury instruction that defined "physically abuse" as "treatment resulting in physical pain, illness, or any impairment of physical conditions" was proper).

In light of the number of criminal cases brought under section 709-906, defining "physically abuse" within section 709-906(19), in a manner consistent with case law and the Hawai'i Pattern Jury Instructions, promotes a uniform and predictable approach for the public, prosecutors, defense attorneys, trial judges, and jurors.

Chapter 710: Offenses Against Public Administration

~~**§ 710-1011 Refusing to aid a law enforcement officer.** (1) A person commits the offense of refusing to aid a law enforcement officer when, upon a reasonable command by a person known to him to be a law enforcement officer, he intentionally refuses or fails to aid such law enforcement officer, in:~~

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

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

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

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

Comment:

"*Posse comitatus*" refers to the "legal power of sheriffs and other officials to summon armed citizens to aid in keeping the peace." "*Posse comitatus*" statutes make it illegal to refuse to comply with a request from law enforcement to aid in arrests or prevent the commission of offenses. These statutes originate in medieval England where citizens were obligated to assist sheriffs and constables in the pursuit of criminals. In 2019, California repealed its *posse comitatus* law which imposed a fine of up to $1,000 on persons who refused to aid "peace officers." The bill's author stated:

> In California, citizens who refuse to join a posse can be held criminally liable for a misdemeanor, for which they can be fined up to $1,000. This '*posse comitatus*' law is a vestige of a bygone era, and when invoked, subjects our citizens to an untenable moral dilemma: join and potentially put one's life at risk, or refuse and become a criminal. SB 192 does away with this unnecessary penalty and helps bring California law into the 21st century.

The Committee believes that section 710-1011 is rarely, if ever, used. A search of Hawai'i appellate cases revealed only one instance where section 710-1011 was cited. This was a civil appeal which discussed the immunity-from-liability provisions in subsection 710-1011(3). There were no criminal appellate cases which involved section 710-1011. The Committee members also raised concerns about the propriety of requiring citizens to choose between assisting a police officer in a potentially dangerous situation (i.e., effectuating or securing an arrest or preventing the commission of a crime) or refusing and being subject to penal liability. Other concerns were the potential civil liability if the citizen were injured while assisting the officer.

§ 710-1012 ~~Refusing to assist in fire control.~~ Disobeying an order or regulation relating to the conduct of persons in the vicinity of a fire. (1) A person commits the offense of ~~refusing to assist in fire control~~ disobeying an order or regulation relating to the conduct of persons in the vicinity of a fire when:

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

~~(b)~~ ~~U~~upon command by a person known to him to be a firefighter ~~or~~, law enforcement officer, emergency medical services personnel, or emergency medical technician, ~~he intentionally~~ the person knowingly

disobeys an order or regulation relating to the conduct of persons in the vicinity of a fire.

(2) "Firefighter" means any officer of a fire department or any other person vested by law with the duty to extinguish fires.

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

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

Comment:

The Committee recommends that section 710- 1012(1)(a), "Refusing to Assist in Fire Control," be revised and renamed.

The Committee raised specific concerns about the propriety of subsection (1)(a), which requires citizens to choose between assisting a law enforcement officer or firefighter in a potentially dangerous situation (i.e., the scene of a fire) or refusing and being subject to penal liability. The term "reasonable command" is also vague and ambiguous. How would a citizen distinguish between a "reasonable command" or an "unreasonable command"? Other concerns were the potential civil liability if citizens are injured while attempting to extinguish a fire at the command of a law enforcement officer or firefighter.

The Committee agreed that subsection 710-1012(1)(b) may have some utility and should be maintained. Subsection 710-1012(1)(b) requires persons in the vicinity of a fire to obey an order of a firefighter or law enforcement officer or regulation relating to the conduct of persons in the vicinity of a fire. There may be instances where law enforcement officers or firefighters need to ensure compliance with orders or regulations, in order to ensure the safety of persons in the vicinity of a fire. Similarly, emergency medical services personnel and emergency medical technicians on-site may issue orders or regulations to persons in the vicinity, in the interest of assisting anyone requiring medical attention. Under such circumstances, it is not wholly unreasonable to impose penal liability to persons who fail to comply with such orders or regulations, when failure to do so may endanger themselves, other persons or property, or impede the actions of these emergency responders.

The Committee further recommends changing the applicable state of mind from "intentionally" to "knowingly." This would make it clear that people are prohibited from knowingly disobeying the orders or regulations of emergency personnel in these situations, even if it is not the person's specific intent to disobey. For example, if a person is told to stay away from

an automobile that is on fire, a "knowing" state of mind would preclude any argument that the person's only intent was to collect important belongings from the vehicle (i.e., the person had no specific intent to disobey orders from emergency personnel).

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

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

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

Comment:

The Committee recommends amending section 710-1021, Escape in the second degree, to include a lower, petty misdemeanor level penalty for individuals charged with non-violent petty misdemeanors, who unlawfully leave a community-based facility after being diverted there for fitness examination via section 704-421.

Maintaining this type of escape as a crime will facilitate such individuals being brought back into the custody of the Director of the DOH quickly and effectively, without penalizing them with a felony offense. The only exception to this, which would remain a class C felony, would be if such an individual is arrested for a new felony offense in the course of the escape or during the pendency of the escape.

If the individual commits a violent misdemeanor or petty misdemeanor offense in the course of the escape or during the pendency of the escape, those could still be charged separately and would not qualify for the diversion program under section 704-421. Moreover, if the individual "intentionally employs physical force, the threat of physical force, or a dangerous instrument against the person of another in escaping…from custody," that could be charged as Escape in the first degree instead.

Chapter 711: Offenses Against Public Order

§ 711-1101. Disorderly Conduct (1) A person commits the offense of disorderly conduct if, with intent to cause physical inconvenience or alarm by a member or members of the public, or recklessly creating a risk thereof, the person:

(a) Engages in fighting or threatening, or in violent or tumultuous behavior;

(b) Makes unreasonable noise;

(c) Subjects another person to offensively coarse behavior or abusive language which is likely to provoke a violent response;

(d) Creates a hazardous or physically offensive condition by any act which is not performed under any authorized license or permit; or

(e) Impedes or obstructs, for the purpose of begging or soliciting alms, any person in any public place or in any place open to the public.

~~(2) Noise is unreasonable, within the meaning of subsection (1)(b), if considering the nature and purpose of the person's conduct and the circumstances known to the person, including the nature of the location and the time of the day or night, the person's conduct involves a gross deviation from the standard of conduct that a law-abiding citizen would follow in the same situation; or the failure to heed the admonition of a police officer that the noise is unreasonable and should be stopped or reduced. The renter, resident, or owner-occupant of the premises who knowingly or negligently consents to unreasonable noise on the premises shall be guilty of a noise violation.~~]

(2) Except as provided in subsection (3), disorderly conduct is a violation.

(3) Disorderly conduct is a petty misdemeanor if it is the defendant's intention to cause substantial harm or serious inconvenience, or if the defendant persists in disorderly conduct after reasonable warning or request to desist. ~~Otherwise disorderly conduct is a violation.~~

§ 711- Consenting to unreasonable noise on premises. A renter, resident, owner-occupant, or other person responsible for a premises who intentionally, knowingly, recklessly, or negligently allows another person to make unreasonable noise on the premises shall be guilty of a violation.

§ 711-1100 Definitions. In this chapter, unless a different meaning is plainly required, or the definition is otherwise limited by this section:

"Animal" includes every living creature, except a human being.

"Equine animal" means an animal of or belonging to the family Equidae, including horses, ponies, mules, donkeys, asses, burros, and zebras.

"Facsimile" means a document produced by a receiver of signals transmitted over telecommunication lines, after translating the signals, to produce a duplicate of an original document.

"Law enforcement animal" means any dog, horse, or other animal used by law enforcement or corrections agencies and trained to work in areas of tracking, suspect apprehension, victim assistance, crowd control, or drug or explosive detection for law enforcement purposes.

"Make unreasonable noise" means make noise that, considering the nature and purpose of the person's conduct and the circumstances known to the person, including the nature of the location and the time of the day or night, involves a gross deviation from the standard of conduct that a law-abiding citizen would follow in the same situation; or make noise that fails to heed the admonition of a police officer that the noise is unreasonable and should be stopped or reduced.

"Necessary sustenance" means care sufficient to preserve the health and well-being of a pet animal, except for emergencies or circumstances beyond the reasonable control of the owner or caretaker of the pet animal, and includes but is not limited to the following requirements:

(1) Food of sufficient quantity and quality to allow for normal growth or maintenance of body weight;

(2) Open or adequate access to water in sufficient quantity and quality to satisfy the animal's needs;

(3) Access to protection from wind, rain, or sun;

(4) An area of confinement that has adequate space necessary for the health of the animal and is kept reasonably clean and free from excess waste or other contaminants that could affect the animal's health; provided that the area of confinement in a primary pet enclosure shall:

(a) Provide access to shelter;

(b) Be constructed of safe materials to protect the pet animal from injury;

(c) Enable the pet animal to be clean, dry, and free from excess waste or other contaminants that could affect the pet animal's health;

(d) Provide the pet animal with a solid surface or resting platform that is large enough for the

pet animal to lie upon in a normal manner, or, in the case of a caged bird, a perch that is large enough for the bird to perch upon in a normal manner;

(e) Provide sufficient space to allow the pet animal, at minimum, to do the following:

(i) Easily stand, sit, lie, turn around, and make all other normal body movements in a comfortable manner for the pet animal, without making physical contact with any other animal in the enclosure; and

(ii) Interact safely with other animals within the enclosure; and

(5) Veterinary care when needed to prevent suffering.

"Obstructs" means renders impassable without unreasonable inconvenience or hazard.

"Pet animal" means a dog, cat, domesticated rabbit, guinea pig, domesticated pig, or caged birds (passeriformes, piciformes, and psittaciformes only) so long as not bred for consumption.

"Primary pet enclosure" means any kennel, cage, or structure used to restrict only a pet animal as defined in this section to a limited area of space, and does not apply to the confinement of any animals that are raised for food, such as any poultry that is raised for meat or egg production and livestock, rabbits, or pigs that are raised specifically for meat production because these animals are not pets when raised for meat or egg production.

"Private place" means a place where one may reasonably expect to be safe from casual or hostile intrusion or surveillance, but does not include a place to which the public or a substantial group thereof has access.

"Public" means affecting or likely to affect a substantial number of persons.

"Public place" means a place to which the public or a substantial group of persons has access and includes highways, transportation facilities, schools, places of amusement or business, parks, playgrounds, prisons, and hallways, lobbies, and other portions of apartment houses and hotels not constituting rooms or apartments designed for actual residence.

"Record", for the purposes of sections 711-1110.9 and 711-1111, means to videotape, film, photograph, or archive electronically or digitally.

"Torment" means fail to attempt to mitigate substantial bodily injury with respect to a person who has a duty of care to the animal.

"Torture" includes every act, omission, or neglect whereby unjustifiable physical pain, suffering, or death is caused or permitted.

Comment:

The Committee recommends amending and clarifying the offense of Disorderly Conduct by: 1) adding a subsection to section 711-1101 to create separate petty misdemeanor and violation level offenses; 2) deleting subsection 711-1101(2) and adding the definition of "unreasonable noise" to section 711-1100; and 3) creating a standalone offense of "Consenting to unreasonable noise on premises."

Currently, section 711-1101(3) combines both petty misdemeanor and violation level penalties under the same subsection. Consequently, a criminal records check may not distinguish between the two offense levels, and any attempt to generate statistics on this offense may be skewed as the two different levels of offense are inextricably combined.

In addition, section 711-1101(2) explains when noise is "unreasonable," and also presents a completely separate offense when a renter, resident, or owner-occupant of a premises knowingly or negligently consents to unreasonable noise being made [by another person] on the premises. Establishing the separate offense under a separate statute would provide greater clarity for the public and for law enforcement. Also, because both section 711-1101 and the separate statute would contain the phrase, "make unreasonable noise"--and that phrase is not used anywhere else in the Hawai'i Revised Statutes--the definition should then be added to the other defined terms under section 711-1100.

Chapter 712: Offenses Against Public Health and Morals

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

(a) Possesses three to twenty-four 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) 0.5 grams up to 3.53 grams containing methamphetamine, heroin, morphine, cocaine, or

fentanyl or any of their respective salts, isomers, and salts of isomers; or

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

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

§ 712-1243.5 Possessing a dangerous drug in the second degree

(1) A person commits the offense of possessing a dangerous drug in the second degree if the person knowingly possesses any dangerous drug in any amount.

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

(3) Whenever a court sentences a person, grants a motion for deferral, or grants a conditional discharge, it shall also require that the person completes a substance abuse assessment and treatment, if necessary.

(4) For a third or any subsequent conviction within five years of a second or subsequent conviction, the sentence shall be six months incarceration as a term and condition of probation with early release to a substance abuse treatment program or up to one year incarceration.

§ 706-623 Terms of probation. (1) When the court has sentenced a defendant to be placed on probation, the period of probation shall be as follows, unless the court enters the reason therefor on the record and sentences the defendant to a shorter period of probation:

(a) Ten years upon conviction of a class A felony;

(b) Five years upon conviction of a class B or class C felony under part II, V, or VI of chapter 707, chapter 709, and part I of chapter 712 and four years upon conviction of any other class B or C felony;

(c) One year upon conviction of a misdemeanor; except that upon a conviction under section 586-4, 586-11, or 709-906, or 712-1243.5, the court may sentence the defendant to a period of probation not exceeding two years; or

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

The court, on application of a probation officer, on application of the defendant, or on its own motion, may discharge the defendant at any time. Prior to the court granting early

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

(2) When a defendant who is sentenced to probation has previously been detained in any state or county correctional or other institution following arrest for the crime for which sentence is imposed, the period of detention following arrest shall be deducted from the term of imprisonment if the term is given as a condition of probation. The pre-sentence report shall contain a certificate showing the length of such detention of the defendant prior to sentence in any state or county correctional or other institution, and the certificate shall be annexed to the official records of the defendant's sentence.

§ 712-1255 Conditional discharge. (1) Whenever any person who has not previously been convicted of any offense under this chapter or chapter 329 or under any statute of the United States or of any state relating to a dangerous drug, harmful drug, detrimental drug, or an intoxicating compound, pleads guilty to or is found guilty of promoting a dangerous drug, harmful drug, detrimental drug, or an intoxicating compound under section 712-1243, 712-1243.5, 712-1245, 712-1246, 712-1248, 712-1249, or 712-1250, the court, without entering a judgment of guilt and with the consent of the accused, may defer further proceedings and place the accused on ~~probation~~ deferral upon terms and conditions. Upon violation of a term or condition, the court may enter an adjudication of guilt and proceed as otherwise provided.

(2) Upon fulfillment of the terms and conditions, the court shall discharge the person and dismiss the proceedings against the person.

(3) Discharge and dismissal under this section shall be without adjudication of guilt and is not a conviction for purposes of this section or for purposes of disqualifications or disabilities imposed by law upon conviction of a crime.

(4) There may be only one discharge and dismissal under this section with respect to any person.

(5) After conviction, for any offense under this chapter or chapter 329, but prior to sentencing, the court shall be advised by the prosecutor whether the conviction is defendant's first or a subsequent offense. If it is not a first offense, the prosecutor shall file an information setting forth the prior convictions. The defendant shall have the opportunity in open

court to affirm or deny that the defendant is identical with the person previously convicted. If the defendant denies the identity, sentence shall be postponed for such time as to permit the trial, before a jury if the defendant has a right to trial by jury and demands a jury, on the sole issue of the defendant's identity with the person previously convicted.

Comment:

The Committee recommends changes to the treatment of criminal defendant substance abusers that possess minute quantities of illegal narcotics. Currently, possession of *any* amount of a dangerous drug such as cocaine, methamphetamine, heroin, and fentanyl, results in a Class C felony. Many of these Class C Felony cases involve possession of drug paraphernalia (such as a pipe) that contain residue or trace amounts of the illegal narcotic when a defendant is not actually ingesting the narcotic. The Committee believes that many of these defendants should be focused on treatment and rehabilitation without the weight of a felony conviction.

Defendants with cases involving trace or residue amounts of illegal narcotics occasionally seek dismissal of the charge under section 702-236 as De Minimis infractions. To preserve the Legislature's prerogative to regulate the possession and use of illegal narcotics, the Committee recommends the replacement of section 712-1243 with a new offense entitled "Possessing a dangerous drug in the first degree" and creating another new offense entitle "Possessing a dangerous drug in the second degree."

The proposed changes aim to divide possessors of illegal narcotics with a usable (and commercially viable) amount from possessors of illegal narcotics in trace or residue amounts. The Committee also recommends amendments to section 706-623 (Terms of Probation) and section 712-1255 (Conditional Discharge) to account for these new offenses and maintain statutory consistency.

Chapter 804: Bail and Bonds (Pretrial Release)

§ 804-7.1 Conditions of release on bail, recognizance, or supervised release. Upon a showing that there exists a danger that the defendant will commit a serious crime or will seek to intimidate witnesses, or will otherwise unlawfully interfere with the orderly administration of justice, the judicial officer named in section 804-5 may deny the defendant's release on bail, recognizance, or supervised release.

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

(1) Prohibiting the defendant from approaching or communicating with particular persons or classes of persons, except that no such order should be deemed to prohibit any lawful and ethical activity of defendant's counsel;

(2) Prohibiting the defendant from going to certain described geographical areas or premises;

(3) Prohibiting the defendant from possessing any dangerous weapon, engaging in certain described activities, or indulging in intoxicating liquors or certain drugs;

(4) Requiring the defendant to report regularly to and remain under the supervision of an officer of the court;

(5) Requiring the defendant to maintain employment, or, if unemployed, to actively seek employment, or attend an educational or vocational institution;

(6) Requiring the defendant to comply with a specified curfew;

(7) Requiring the defendant to seek and maintain mental health treatment or testing, including treatment for drug or alcohol dependency, or to remain in a specified institution for that purpose;

(8) Requiring the defendant to remain in the jurisdiction of the judicial circuit in which the charges are pending unless approval is obtained from a court of competent jurisdiction to leave the jurisdiction of the court;

(9) Requiring the defendant to submit to the use of electronic monitoring and surveillance;

(10) Requiring the confinement of the defendant in the defendant's residence;

(11) Requiring the defendant to satisfy any other condition reasonably necessary to ensure the appearance of the defendant as required and to ensure the safety of any other person or community; or

(12) Imposing any combination of conditions listed above; provided that the court shall impose the least restrictive non-financial conditions required to ensure the defendant's appearance and to protect the public. Unless specifically required by another statute, to the extent the conditions of release require electronic monitoring and surveillance, the Department of Corrections and Rehabilitation shall be responsible for the cost, and the defendant shall not be charged. This does not prohibit the department from seeking reimbursement from the defendant or filing a claim/complaint for lost and/or damages to the equipment. The Department’s responsibilities regarding electronic monitoring and surveillance shall be subject to legislative appropriations specific for this purpose.

The judicial officer may revoke a defendant's bail upon proof that the defendant has breached any of the conditions imposed.

Comment:

Pretrial release of a criminal defendant can include the requirement of electronic monitoring to ensure they abide by court orders such as curfew and not having contact with witnesses. However, there are costs associated with electronic monitoring and surveillance. This proposal recognizes that fees tied to pretrial conditions of release could be unfairly burdensome on defendants and ensures that defendants entitled to release will not remain incarcerated due only to their inability to pay. For example, defendants are currently charged approximately $3.50 per day or $105 per month for electronic monitoring. Many people do not have the financial resources to pay $105 per month to stay out of custody for the duration of a criminal case, resulting in disparate pretrial incarceration of indigent defendants.

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

Comment:

The 2019 amendments to HRS Chap. 804 included an amendment to section 804-7 requiring the "establishment and administration of a statewide program that permits the posting of monetary bail seven-days-a-week for defendants who remain in the custody of the director of corrections and rehabilitation." To date, such a program has not been implemented. The legislative amendment in this section allows the Legislature sets a deadline by which to establish and administer a statewide program.

VII. Issues without Recommendations

Chapter 702: General Principles of Penal Liability
Chapter 703: General Principles of Justification

Section 702-230 Intoxication

The Subcommittee discussed the Intoxication statute in section 702-230 in light of new caselaw from the Hawai‘i Supreme Court. Intoxication can complicate a criminal case. The language and structure of section 702-230 can be challenging. First, the statute in subsection (5) distinguishes "self-induced intoxication" from non-self-induced and "pathological intoxication."

Self-induced intoxication ("SID") occurs when the defendant "knowingly introduces" intoxicating substances into the body that have a "tendency of which to cause intoxication the defendant knows or ought to know[.]" That is, unless the defendant does it "pursuant to medical advice or under circumstances that would afford a defense to a charge of a penal offense[,]" SID is not a defense according to sections 702-230(5) and 702-230(1). But evidence of SID is admissible to prove or disprove conduct or state of mind in subsection (2). It is not admissible to *disprove* state of mind. In other words, defendants cannot present evidence or argue to the trier of fact that they were so intoxicated after drinking or using recreational drugs that they could not have intentionally, knowingly, or even recklessly committed the offense.

The Hawai'i Supreme Court has refined when SID occurs and, thus, is not available as a defense. The key here is the introduction of substances. In *State v. Abion*, 148 Hawai'i 445, 457, 478 P.3d 270, 282 (2020), SID "applies only when a defendant is under the temporary influence of voluntarily ingested substances at the time of an act." The Hawai‘i Supreme Court has also held in *State v. Eager*, 140 Hawai'i 167, 174, 398 P.3d 756, 763 (2017), that criminal conduct attributed to the defendant's refusal to take prescribed medication is not SID.

In the *Abion* case, the Hawai'i Supreme Court examined the interplay between the intoxication statute and the insanity defense. The insanity defense shields defendants from guilt when—at the time the criminal conduct occurred—a "physical or mental disease, disorder, or defect" prevents them of the capacity to either appreciate the wrongfulness of their conduct or conform their conduct to the requirements of the law. But, according to section 702-203(3), intoxication "in itself," does not "constitute a physical or mental disease, disorder or defect within the meaning of section 704-400." The Hawai'i Supreme Court read the statutes together and confirmed that intoxication is an exception to the insanity defense. And it clarified that SID, as an exception to the insanity defense, should be read narrowly and applies only "to acts committed while a person is temporarily under the influence of

voluntarily ingested substances." Thus, defendants can assert the insanity defense when the cause of their disease, disorder, or defect resulted from the effects of long-term substance abuse (but not from being under the influence of an intoxicant at the time of the act).

Pathological intoxication ("PI") in subsection (5) occurs when the intoxication is "grossly excessive in degree," the defendant "does not know the defendant is susceptible" to this excessive form of intoxication, and the defendant actually has "a physical abnormality" resulting in the intoxication. PI is an affirmative defense. There are few cases directly discussing PI. The last part of the PI defense contemplates evidence that the defendant suffered from a physical defect. And so, it seems that PI is really nothing more than a specific type of "physical . . . disease, disorder, or defect" absolving the defendant of criminal responsibility.

Finally, there is another kind of intoxication, which the statute calls "Not self-induced intoxication" ("NSID") in section 702-230(4)(a). NSID, like PI, is an affirmative defense. There is no statutory definition of NSID. This complicates things. Because NSID is an affirmative defense, the defendant must show that there was intoxication and that it was not self-induced. That means the burden is on the defendant to show that the intoxication was not knowingly introduced, or it was introduced and but the "tendency of which to cause intoxication" was not known or was not reasonably known, or the defendant introduced the substances based on medical advice or "under circumstances that would afford a defense to a charge of penal offense."

It appears that this statute, though difficult to read at times, makes sense and appears to meet the general public's expectation that a person cannot get drunk or high, commit a crime, and be acquitted because of their intoxication. The Subcommittee believes that the Judiciary's Committee on Pattern Jury Instructions is best suited to craft appropriate jury instructions when these issues are raised at trial, rather than legislative changes in the attempt to clarify the statute that encompasses a wide array of factual circumstances.

Section 702-236 De Minimis Infractions

From a separation-of-powers standpoint, section 702-236, "De minimis infractions," is an example of healthy checks and balances. Normally, the executive branch's "broad discretion" to prosecute defendants goes unchallenged.[3] But here the Legislature empowered courts to "dismiss a prosecution" under certain circumstances.

[3] *See State v. Radcliffe*, 9 Haw. App. 628, 640, 859 P.2d 925, 933 (1993).

The three circumstances where a court may dismiss a prosecution are listed in subsections (1)(a) through (c). Out of the three, the most commonly litigated is subsection (1)(b) where the defendant's conduct "[d]id not actually cause or threaten the harm or evil sought to be prevented by the law defining the offense or did so only to an extent too trivial to warrant the condemnation of conviction[.]"

There appears to be no impetus for a substantive change to these three subsections. And allowing judicial review of the prosecution's discretion under these circumstances appears to be settled. But questions have arisen as to *when* defendants should bring a de minimis challenge. It is not uncommon to raise a subsection (1)(b) challenge as a pretrial motion. But in doing so, the defense is in the awkward position of admitting or conceding that the offense occurred before being found guilty. Of course, litigants should be able to circumvent this by pointing out that even if the facts are established as the prosecution alleges, the charge should be dismissed. Another avenue for defendants is to simply rely on the finding of probable cause for the offense and then provide additional evidence to apprise the court of the "nature of the attendant circumstances" surrounding the offense. Yet another possibility is to raise the de minimis challenge after the State rests. Defendants can then move for dismissal and present evidence of the attendant circumstances.

The absence of statutory guidance gives defendants flexibility as to when the de minimis challenge may be raised. Nevertheless, there does not appear to be overuse of this statue and the Subcommittee believes amendments are unnecessary.

Section 703-304 Use of force in self-protection

In connection with HRS Chapter 703, the Subcommittee primarily centered its attention on this chapter around section 703-304, "Use of Force in Self-Protection," specifically the language of "immediately necessary." At the request of a Subcommittee member, this discussion evolved to the corresponding issue of "Stand Your Ground." A stand-your-ground law, sometimes called a "line in the sand" or "no duty to retreat" law, provides that people may use deadly force when they reasonably believe it to be necessary to defend against certain violent crimes (right of self-defense). Under such a law, people have no duty to retreat before using deadly force in self-defense, so long as they are in a place where they are lawfully present. The exact details vary by jurisdiction.

Hawai'i adopts the alternative to stand your ground: "duty to retreat." That is, even a person who is unlawfully attacked (or who is defending someone who is unlawfully attacked) may not use deadly force if it is possible to instead avoid the danger with complete safety by retreating. The political ramifications between the two doctrines are beyond the scope of this Committee.

Nonetheless, section 703-304 prescribes specific requirements regarding the duty to retreat, but not without arguable differences between ordinary self-protection and self-protection using deadly force. Sections 703-304(1) and 703-304(2) differ when the requirements of "immediately necessary" and "necessary" are applied to self-protection (without deadly force) and use of deadly force, respectively. That is, it was raised by Subcommittee members that the word "immediately" was absent from 703-304(2). In *State v. Reis*, WL635324, and *In Re DM*, 152 Haw. 469, the appellate courts discussed these same issues and raised concerns. After a review of current case law, it was determined that the language of section 703-304 is correct and the Judiciary's Committee on Pattern Jury Instructions is working on the issue for trial judges when this issue is raised in specific cases. As such, no modification to section 703-304 is proposed.

Chapter 706: Disposition of Convicted Defendants
Chapter 853: Deferred Acceptance of Guilty and No Contest Plea

Individualized Conditions of Probation

The 706/853 Subcommittee discussed changes to section 706-624 and whether the mandatory and discretionary conditions of probation should be specifically tailored to the individual's particular risks/needs.

Mandatory and discretionary conditions are tool kits for the court and probation officers to address the needs of probationers according to risk level. The mandatory conditions in section 706-624 are sensible and the discretionary conditions have been reasonably related and applied by the probation department and the court. Inconsistencies in the application could be addressed through training. Statutory changes are unnecessary at this time, and administrative adjustments can be addressed internally at the Judiciary.

The Subcommittee discussed the need for a collaborative process to loop the public defender into the risks/needs assessment and monitoring of compliance to avoid the accumulation of violations that lead to probation revocations and open terms of imprisonment. The identified barriers in the compliance of mandatory and discretionary conditions are the lack of treatment for individuals with mental health and/or drug dependency, and the lack of stable housing.

Early Discharge of Probation

The Subcommittee discussed codifying a proof of compliance hearing (no later than midpoint of probation term) to evaluate progress made by a defendant utilizing a checklist for possible early discharge for certain offenses,

and possible creation of a compliance calendar to manage hearings. These proof of compliance hearings could trigger early termination of probation. Part of the discussion included how victims are notified of possible early termination of probation and how to amend section 801D-4 (the "Basic bill of rights for victims and witnesses"). If adopted, a legislative funding request may be required for additional court resources. Collaboration is needed with prosecutors' office to support early discharge when appropriate. The Subcommittee favored recommending a legislative change for midpoint reviews at plenary session.

When presented to the Committee during plenary session, this recommendation did not achieve supermajority approval. While this proposal created a statutory mechanism to trigger early termination of probation, the plenary discussion recognized that early termination of probation is already possible under the current statutory scheme. Ultimately, the costs associated with the midpoint proof of compliance hearings outweighed any benefits.

Chapter 853 Deferred Pleas

Section 853-1 specifically authorizes a court to defer the acceptance of a no contest or guilty plea "upon any of the conditions specified by section 706-624." There are no analogous provisions in HRS Chapter 853 to those in section 706-623. The only provision in HRS Chapter 853 that addresses the length of deferral periods is found in section 853-1, which provides that the maximum duration of a deferral period for a felony cannot "exceed the maximum sentence allowable[.]"

A number of subcommittee members noted that in practice, judges tend to order durations of deferral that are equal to the duration of probation that would apply to the same offense. In addition, notwithstanding the fact that there is no express mechanism in Chapter 853 for early discharges from deferrals, in practice motions for early discharge are filed and heard. As a result, it was suggested that changes to section 706-623 would be followed in deferral cases, whether or not Chapter 853 were amended to reflect those changes.

Finally, concerns were raised about the wisdom of importing changes in Chapter 706 into Chapter 853 on a piecemeal basis.

At the conclusion of these discussions, there was a consensus against amending Chapter 853 to reflect any of the changes to section 706-623 under discussion by the Subcommittee.

Chapter 134: Firearms, Ammunition and Dangerous Weapons

"Ghost Guns"

The Subcommittee devoted great time and discussion to address the increase in gun violence. Of particular concern was the current proliferation of "ghost guns," their prevalence in law enforcement investigations, and how they were not adequately addressed by the Penal Code. The Subcommittee reviewed statutes of other states and their treatment of ghost guns, the Gun Control Act of 1968, the National Firearms Act of 1988, the Undetectable Gun Act, legislative history of HRS Chapter 134, and current Hawai'i caselaw on the treatment of firearms. The Survey "ghost gun" treatment in other states is included in Appendix B1

The ghost gun issue was resolved with Act 18 SLH2025 (the former House Bill 392) that not only defines a "ghost gun," but amended section 134-8 to prohibit possession, and created the new section for imprisonment when a ghost gun is used in the commission of a felony.

Chapter 708: Offenses Against Property Rights

Theft in the First Degree

The Chapter 708 Subcommittee recommended a mandatory minimum period of 18 months incarceration when a person is convicted of Theft in the first degree involving loss of more than $250,000, whether as a part of a ten-year indeterminate term of imprisonment or as a condition of probation.

The Subcommittee's recommendation sought to differentiate the punishments of theft of $20,000 (the general minimum threshold for Theft in the first degree) and theft of more than $250,000. The rationale being that theft of the greater amount reflected greater criminality and resulted in greater harm.

Despite the recommendation of the Subcommittee, this recommendation was not approved by the Committee in plenary session. Concerns about mandatory sentencing, and limiting judicial discretion, were discussed. Examples were shared where thefts, even those involving large amounts, can be distinguished by motive, sophistication of the scheme, and actual harm to the victim(s). That a sentencing judge should be able to consider all the relevant factors and fashion an appropriate sentence for each individual case weighed heavily on the recommendation failing to achieve supermajority approval.

Organized Retail Theft

The Subcommittee investigated and discussed "Organized Retail Theft." Incidents involving a group or groups of people committing theft in ways that overwhelm retail security measures and/or law enforcement measures have captured media attention and appear to be on the rise in Hawai'i as well as on the continent. Further analysis and examination of the issues surrounding organized retail theft is of interest to determine if such a statute is needed, and if so, what approach will be the most effective at targeting professional thieves who prey on the commercial retail establishments in our community.

The Subcommittee surveyed many states that established statutes to combat organized retail theft. A chart of organized retail theft laws across the country is included in Appendix B2. The focus and elements or these various statutes vary greatly in approach, proof required, and penalties imposed. These differences include the requirements of the number of suspects needed to prosecute, the type of cooperation between the suspects needed to be proved, and the appropriate financial threshold for this offense. Given the lack of available data regarding organized retail thefts affecting the current community, a future group including more stakeholders from retail businesses and law enforcement might be best suited to determine what evils a potential organized retail theft statute should seek to address.

Theft Value Thresholds

This Committee, unlike the 2015 Penal Code Review Committee, was not directed by the Legislature to consider the theft thresholds. Nevertheless, the Subcommittee did raise the issue, discussed it, and was cognizant of the concerns of the business community and law enforcement regarding property crime, and the potential effects that are concomitant with increases in value thresholds.

Hawaii's current thresholds are relatively low compared to the rest of the country. Thresholds for Theft in the Second Degree, Theft in the Third Degree, and Theft in the Fourth Degree have not changed since 2016 (pursuant to the last Penal Code Review). The $20,000 threshold for Theft in the First Degree has not changed since 1986. The State currently has the seventh lowest felony threshold among the states and Washington D.C. (a survey of theft thresholds is included as Appendix B3). This ranking is especially low in the context of inflation in recent years and Hawaii's high cost of goods and services. Raising value thresholds would reduce the number of felony cases and avoid labeling lower-level offenders as felons. The Subcommittee believes that these laudable goals would reduce the amount of government resources spent on felony

property crimes and increase the chances of rehabilitation for low-level offenders.

While Act 245 SLH2024 did not focus on theft value thresholds, this issue will be increasing in importance to the community, especially in light of the current and turbulent economic environment. The next Penal Code Review Committee should be directed to focus on this issue if the Legislature, on its own, does not address it prior.

Chapter 710: Offenses Against Public Administration

Section 710-1010.5 Interference with reporting an emergency or crime

The Subcommittee recommended amending section 710-1010.5 Interference with reporting an emergency or crime, from a petty misdemeanor to a misdemeanor offense. The recommendation also added the reckless state of mind to further effectuate the perceived legislative intent of the statute.

This offense was created to deter perpetrators of domestic violence who prevent victims and witnesses from contacting authorities for assistance in situations of domestic violence. Because Hawaii's body of law surrounding domestic violence—and victims of crime in general—has greatly evolved since this statute was created in 2001, to embrace a more victim-centered approach, the Subcommittee believed that a misdemeanor offense would serve as a more effective and appropriate deterrent to would-be perpetrators, and provide a more appropriate message to would-be victims and witnesses that such behavior is a high priority to the community and will not be tolerated.

When presented to the Committee in plenary session, this proposal did not obtain supermajority approval.

Chapter 804: Bail and Bonds (Pretrial Release)

Codification of factors for least restrictive conditions for pretrial release

The Subcommittee proposed the creation of a new section defining "least restrictive conditions" for pretrial release to further the intent of Act 179 SLH2019. The proposal provided more guidance by defining "least restrictive conditions," and requiring (or alternatively suggesting) that courts specifically consider less-restrictive alternatives before ordering secured, monetary bail. These proposed amendments also required consideration of relevant factors and how they will be impacted by a bail decision. For example, the court would consider the defendant's employment and housing, and what would be necessary for the defendant to maintain stable employment and housing.

Consideration of these factors is not only important for bail decisions, but necessary to facilitate re-entry and rehabilitation, in the event a defendant is convicted. Consideration of the impact of bail on a variety of aspects of the defendant's life will ensure that bail decisions are individualized and not "mechanically confirming unaffordable amounts" of money bail.

During presentation at a plenary session, the Committee had an extensive discussion on the need for new legislation. The discussion focused on whether or not courts were already following the requirements of Act 179 SLH2019. Many factors in the proposed legislation were already actively considered by courts when making pretrial release decisions, including a defendant's ability to afford bail. Ultimately this set of proposals failed to attain approval by a supermajority of the Committee.

GOV. MSG. NO. 1350

EXECUTIVE CHAMBERS
KE KE'ENA O KE KIA'ĀINA

JOSH GREEN, M.D.
GOVERNOR
KE KIA'ĀINA

July 9, 2024

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

The Honorable Scott K. Saiki
Speaker, and Members of the
House of Representatives
Thirty-Second State Legislature
State Capitol, Room 431
Honolulu, Hawai'i 96813

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

This is to inform you that on July 9, 2024, the following bill was signed into law:

HB1953 HD1 SD2 CD1 — RELATING TO THE PENAL CODE.
ACT 245

Sincerely,

Josh Green M.D.

Josh Green, M.D.
Governor, State of Hawai'i

Approved by the Governor

on JUL 9 2024

ACT 245

HOUSE OF REPRESENTATIVES
THIRTY-SECOND LEGISLATURE, 2024
STATE OF HAWAII

H.B. NO. 1953 H.D. 1 S.D. 2 C.D. 1

A BILL FOR AN ACT

RELATING TO THE PENAL CODE.

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

SECTION 1. The legislature finds that the Hawaii Penal Code is the fundamental document by which the State addresses crime. It is imperative that such an important part of state law receives full and deliberate attention from time to time to ensure the Code's continued force and effectiveness.

Since the Hawaii Penal Code was enacted in 1972, there have been four significant reviews of the Code by means of:

(1) Act 291, Session Laws of Hawaii 1983, which resulted in the enactment of many of the committee on penal code revision and reform of the judicial council of the Hawaii supreme court's recommendations as Act 314, Session Laws of Hawaii 1986;

(2) Act 284, Session Laws of Hawaii 1993, which did not result in legislative action on the recommendations of the committee on penal code review;

(3) Act 125, Session Laws of Hawaii 2005, which led to enactment of many of the committee on penal code

review's recommendations as Act 230, Session Laws of Hawaii 2006; and

(4) House Concurrent Resolution No. 155, S.D. 1, Regular Session of 2015, which led to the enactment of Act 231, Session Laws of Hawaii 2016.

The legislature concludes that it is time for another review. The purpose of this Act is to require the judicial council to conduct another comprehensive review of the Hawaii Penal Code to be completed no later than forty days prior to the convening of the regular session of 2026.

SECTION 2. The judicial council, as established pursuant to section 601-4, Hawaii Revised Statutes, through an advisory committee on penal code review, shall conduct a comprehensive review of the Hawaii Penal Code and recommend to the legislature necessary amendments to ensure:

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

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

(3) That grades and punishment are appropriate and proportionate to other sentences imposed for criminal or civil offenses and 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;

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

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

SECTION 3. (a) No later than September 1, 2024, the judicial council shall appoint an advisory committee on penal code review. The advisory committee shall include the following members:

(1) Representatives of the judiciary;

(2) A member of the senate standing committee on judiciary;

(3) A member of the house of representatives standing committee on judiciary and Hawaiian affairs;

(4) The attorney general, or the attorney general's designee;

(5) A representative of the office of the public defender;

(6) The administrator of the office of Hawaiian affairs, or the administrator's designee;

(7) A representative of the department of corrections and rehabilitation;

(8) A representative of the department of law enforcement;

(9) The governor's senior advisor for mental health and the justice system;

(10) The prosecuting attorney of each county, or each prosecuting attorney's designee; and

(11) A representative of the police department of each county, at least one of which shall be in a role that focuses on mental health.

(b) The following members shall be invited by the judicial council to participate on the advisory committee:

(1) Representatives from citizen participation bodies, such as neighborhood boards;

(2) Private citizens interested in criminal law and civil liberties;

(3) Hawaii-licensed attorneys in private practice who handle criminal cases;

(4) Representatives from advocacy groups for incarcerated individuals;

(5) Representatives from advocacy groups for crime victims;

(6) Psychologists or social workers; and

(7) Any other members the judicial council deems necessary.

(c) The members of the advisory committee shall serve without compensation but shall be reimbursed for expenses, including travel expenses, necessary for the performance of their duties.

(d) The advisory committee shall submit a report of its findings and recommendations, including any proposed legislation, to the legislature no later than forty days prior to the convening of the regular session of 2026.

SECTION 4. The judicial council may appoint a reporter for the review and other research and clerical staff, as may be necessary, without regard to chapter 76, Hawaii Revised Statutes. In selecting the reporter and research and clerical

staff, the judicial council is urged to use, to the greatest extent possible, the faculty and students of the university of Hawaii at Manoa William S. Richardson school of law.

SECTION 5. There is appropriated out of the general revenues of the State of Hawaii the sum of $10,000 or so much thereof as may be necessary for fiscal year 2024-2025 for the purposes of this Act.

The sum appropriated shall be expended by the judiciary for the purposes of this Act.

SECTION 6. This Act shall take effect on July 1, 2024.

APPROVED this 9th day of July , 2024

GOVERNOR OF THE STATE OF HAWAII

HB No. 1953, HD 1, SD 2, CD 1

THE HOUSE OF REPRESENTATIVES OF THE STATE OF HAWAII

Date: May 1, 2024
Honolulu, Hawaii

We hereby certify that the above-referenced Bill on this day passed Final Reading in the House of Representatives of the Thirty-Second Legislature of the State of Hawaii, Regular Session of 2024.

Scott K. Saiki
Speaker
House of Representatives

Brian L. Takeshita
Chief Clerk
House of Representatives

THE SENATE OF THE STATE OF HAWAI'I

Date: May 1, 2024
Honolulu, Hawai'i 96813

We hereby certify that the foregoing Bill this day passed Final Reading in the Senate of the Thirty-Second Legislature of the State of Hawai'i, Regular Session of 2024.

President of the Senate

Clerk of the Senate

Appendix B:
Subcommittee Rosters and Work-up

Chapter 701: Preliminary Provisions
Chapter 702: General Principles of Penal Liability
Chapter 703: General Principles of Justification
Chapter 705: Inchoate Crimes
Subcommittee Chair: Judge Wendy DeWeese
Subcommittee Members:

Hon. Todd Eddins (Judiciary)
Hon. Sonja McCullen (Judiciary)
Nelson Goo, Esq.
Adrian Dhakhwa, Esq. (Attorney General)
Benjamin Lowenthal, Esq.

Dates of Subcommittee Meetings

December 6, 2024
January 3, 2025
April 4, 2025
May 2, 2025

Reference Materials

The Subcommittee reviewed and analyzed caselaw involving issues in Chapters 701, 702, 703, and 705, including *State v. Abion*, 148 HAW. 445 (2020), *State v. Eager*, 140 Haw. 167 (2017), *State v. Radcliffe*, 9 Haw. App. 628 (1993), 155 Haw 452 (2025), and In re DM, 152 Haw 469 (2023). Additionally, the subcommittee reviewed the commentary and legislative history of implicated statutes.

Hawaii Pattern Jury Instructions - Criminal

Chapter 704: Penal Responsibility and Fitness to Proceed
Subcommittee Chair: Judge M. Kanani Laubach
Subcommittee Members:

Jennifer Awong, Esq. (Judiciary)
Brenda Bauer-Smith, Psy.D. (Department of Health)
Scott Bell, Esq. (Honolulu Prosecutor's Office)
Michael Champion, M.D. (Governor's Office)
David Day, Esq. (Attorney General)
Daylin-Rose Heather, Esq. (Judiciary)
Hon. Ronald Johnson (Judiciary)
Sarah Nishioka, Esq. (Public Defender)
Stanton Oshiro, Esq.
Hon. Karl Rhoads (State Senate)
Ramsey Ross, Esq., then Tracy Murakami, Esq. (Kauai Prosecutor's Office)

Dates of Subcommittee Meetings

December 13, 2024
February 10, 2025
February 28, 2025
June 26, 2025
July 3, 2024
August 21, 2025
August 21, 2025

Reference Materials

HEALTH INSURANCE PORTABILITY AND ACCOUNTABILITY ACT (HIPAA), 42 U.S.C. § 1320d *et seq.*

Act 226 SLH2016

A.G. Opinion 23-01

The Subcommittee consulted with Deputy Attorney Generals for information on the operation of HIPAA, and for input by DCR, DOH Adult Mental Health Division, ACSB.

The Subcommittee also reviewed and analyzed caselaw involving issues in Chapter 704

Chapter 706: Disposition of Convicted Defendants
Chapter 853: Deferred Acceptance of Guilty and No Contest Plea
Subcommittee Chair: Judge Matthew Viola
Subcommittee Members:

Saifolio Aganon (Probation Administrator for Judiciary)
Rosemarie Albano (Victim Witness Kokua Honolulu Prosecutor's Office)
Kat Brady (Community Alliance on Prisons)
Thomas Brady, Esq. (Honolulu Prosecutor's Office)
Hayley Cheng, Esq. (Public Defender)
Hon. Brian Costa (Judiciary)
Dennis Dunn
Pamela Ferguson-Brey (Crime Victim Compensation Commission)
Tommy Johnson (Department of Corrections and Rehabilitation)
Nikos Leverenz (Hawai'i Health and Harm Reduction Center)
Hon. Paul Wong (Judiciary)

Dates of Subcommittee Meetings

December 6, 2024
January 3, 2025
April 4, 2025
May 9, 2025

Reference Materials

"2019 RECIDIVISM UPDATE" Hawaii's Interagency Council on Intermediate Sanctions, March 2021.

"EARLY TERMINATION OF SUPERVISION: NO COMPROMISE TO COMMUNITY SAFETY" Laura Baber and James Johnson, Office of Probation and Pretrial Services, Administrative Office of the U.S. Courts, September 2013

"JUSTICE REFORM AND CRIME VICTIMS" January 2022

"STATES CAN SHORTEN PROBATION AND PROTECT PUBLIC SAFETY" Pew Charitable Trust Report, December 2020.

VICTIM RESTITUTION MATTERS: FOUR LESSONS FROM HAWAI'I TO ENSURE FINANCIAL JUSTICE FOR CRIME VICTIMS, January 2021

Chapter 707: Offenses Against the Person
Chapter 709: Offenses Against Family and Against Incompetents
Chapter 134: Firearms, Ammunition and Dangerous Weapons
Subcommittee Chair: Judge Gregory Meyers
Subcommittee Members:

Aaron Wills, Esq.
Major Brandon Nakasato (HPD)
Hon. Catherine Remigio (Judiciary)
Hon. Rowena Somerville (Judiciary)
David Van Acker (Attorney General)

Dates of Subcommittee Meetings

January 10, 2025
February 21, 2025
March 3, 2025
April 17, 2025
May 16, 2025
July 7, 2025
August 21, 2025

Reference Materials

Gun Control Act of 1968 (18 U.S.C. Chapter 44)

National Firearms Act of 1988 (18 U.S.C. § 922(p))

DOES THE "GHOST" IN "GHOST GUN" NEGATE THE "GUN" PART?: THE IMPLICATIONS OF GARLAND V. VANDERSTOK UPHOLDING FIREARM CLASSIFICATION FOR GHOST GUNS, Abagail Crabtree, University of Cincinnati Law Review Vol. 93

HONOLULU HASN'T PROSECUTED A SINGLE GHOST GUN CASE SINCE 2020 BAN, Caitlin Thompson & Madeleine Valera, Honolulu Civil Beat, March 5, 2025

STRATEGY OF A GUN RIGHTS GROUP: ATTACK ONLINE, PREVAIL IN COURT, Emily R. Siegel, Lydia Wheeler and K. Sophie Will, Bloomberglaw.com, February 6, 2025

Research and survey of Ghost Gun laws in other states (attached as Appendix B1)

Act 18 SLH2025

Hawaii Pattern Jury Instructions – Criminal

ANNUAL REPORT HAWAIʻI STATE JUDICIARY STATISTICAL SUPPLEMENT, 2023

The Subcommittee also reviewed and analyzed caselaw, both State and Federal, involving firearm issues

Chapter 708: Offenses Against Property Rights
Subcommittee Chair: Judge Clarissa Malinao
Subcommittee Members:

Captain Bode Parker (HPD)
Chad Kumagai, Esq. (Attorney General)
Richard Sing, Esq.
Kory Young, Esq. (Attorney General)

Dates of Subcommittee Meetings

December 4, 2024
January 3, 2025
February 7, 2025
March 28, 2025
April 25, 2025

Reference Materials

Research and survey of Organized Retail Theft laws in other states (attached as Appendix B2)

Research and survey of Felony Theft Thresholds in other states (attached as Appendix B3)

The Subcommittee also reviewed and analyzed case law regarding property crimes

Chapter 710: Offenses Against Public Administration
Chapter 711: Offenses Against Public Order
Subcommittee Chair: Judge Tracy Fukui
Subcommittee Members:

Jason Burks, Esq.
Jon Ikenaga, Esq. (Public Defender)
Tricia Nakamatsu, Esq. (Attorney General)
James Tabe, Esq.

Dates of Subcommittee Meetings

January 3, 2025
February 20, 2025
April 4, 2025
May 2, 2025
July 29, 2025

Reference Materials

Research and survey of First Responder Assistance laws in other states

THE POSSE COMITATUS AND THE OFFICE OF SHERIFF: ARMED CITIZENS SUMMONED TO THE AID OF LAW ENFORCEMENT, David B. Kopel, 104 J. Crim. L. & Criminology 761 (2015).

"Changes to the Law in Norman England."
https://www.gcsehistory.com/faq/normanlaw.html

S.B. 192, 2019 Reg. Sess. (Cal. 2019).

Chapter 712: Offenses Against Public Health and Morals
Subcommittee Chair: Judge Trish Morikawa
Subcommittee Members:

Tracy Murakami, Esq. (Kauai Prosecutor succeeding Ramsey Ross)
Captain Jerome Pacarro (HPD)
Rick Sing, Esq.

Dates of Subcommittee Meetings

December 6, 2024
January 3, 2025
May 13, 2025
July 30, 2025

Reference Materials

Research and survey of pending Promoting a Dangerous Drug in the third degree cases (attached as Appendix B4)

Research and survey of drug possess thresholds in other states (attached as Appendix B5)

ANALYSIS OF PDD3 CHARGES DURING 2019-2024, Mojtaba Abolfazli and Adam Cohen

Chapter 804: Bail and Bonds (Pretrial Release)
Subcommittee Chair: Judge Christopher Dunn
Subcommittee Members:

Sean Aronson, Esq. (Legislature)
Jongwook "Wookie" Kim (ACLU Hawai'i)
James Lindblad (Bail Bondsman)
Tracy Murakami, Esq. (Kauai Prosecutor succeeding Ramsey Ross, Esq.)
Matthew Nardi, Esq.
Major Bradon Ogata (HPD)
Rep. David Tarnas (Legislature)
Zachary Wingert, Esq. (Public Defender)
Hon. Kristine Yoo (Judiciary)
Kory Young, Esq. (Attorney General)

Dates of Subcommittee Meetings

December 13, 2024
January 10, 2025
February 21, 2025
April 4, 2025
May 15, 2025
June 20, 2025

Reference Materials

HAWAI'I CRIMINAL PRETRIAL REFORM: RECOMMENDATIONS OF THE CRIMINAL PRETRIAL TASK FORCE TO THE THIRTIETH LEGISLATURE OF THE STATE OF HAWAI'I, December 2018

CRIMINAL JUSTICE DEEP DIVE: A CLOSER LOOK AT HAWAI'I BAIL STATUTES AND PRACTICES, Jongwook "Wookie" Kim, Samantha McNichols, January 2024

Act 179 SLH2019

HB 127 2025 Legislature

HB 675 2025 Legislature

SB725 2025 Legislature

The Subcommittee also reviewed and analyzed statutes and caselaw regarding pretrial release

Gun Law Reg Strength	State	Statute #	Statute	What the state requires? (per Ghost Gun Regulation)
			Key search terms: "Ghost guns" OR "precursor parts" OR "unfinished part" OR "unfinished receiver" or "3-D printer" OR "3-D printing" OR "three-dimensional printer" OR "plastic undetectable guns" OR "plastic guns" OR "undetectable guns" OR "firearm" OR "untraceable firearms" OR "computer numerical control (CNC) milling machine firearm"	
1	**CALIFORNIA**	§ 3273.50. Definitions	As used in this title, the following definitions apply:.. (b) "Firearm" has the same meaning as provided in subdivisions (a) and (b) of Section 16520 of the Penal Code. **(c) "Firearm accessory" means an attachment or device designed or adapted to be inserted into, affixed onto, or used in conjunction with a firearm that is designed, intended, or functions to alter or enhance the firing capabilities of a firearm, the lethality of the firearm, or a shooter's ability to hold and use a firearm.** **(d) "Firearm-related product" means a firearm, ammunition, a firearm precursor part, a firearm component, firearm manufacturing machine, and a firearm accessory that meets any of the following conditions:** (1) The item is sold, made, or distributed in California. (2) The item is intended to be sold or distributed in California. (3) The item is or was possessed in California and it was reasonably foreseeable that the item would be possessed in California. (e) "Firearm precursor part" has the same meaning as provided in Section 16531 of the Penal Code.... **(g) "Firearm manufacturing machine" means a three-dimensional printer, as defined in Section 29185 of the Penal Code, or CNC milling machine that, as described in that section, is marketed or sold as, or reasonably designed or intended to be used to manufacture or produce a firearm.** (h) "Reasonable controls" means reasonable procedures, acts, or practices that are designed, implemented, and enforced to do the following: (1) Prevent the sale or distribution of a firearm-related product to a straw purchaser, a firearm trafficker, a person prohibited from possessing a firearm under state or federal law, or a person who the firearm industry member has reasonable cause to believe is at substantial risk of using a firearm-related product to harm themselves or another or of possessing or using a firearm-related product unlawfully. (2) Prevent the loss or theft of a firearm-related product from the firearm industry member. (3) Ensure that the firearm industry member complies with all provisions of California and federal law regulating the	Serial numbers and background checks for component parts, all ghost guns must be reported to officials.
		§ 29185. CNC milling machine or three-dimensional printer; prohibitions; requirements	**(a) No person, other than a state-licensed firearms manufacturer, shall use a computer numerical control (CNC) milling machine or three-dimensional printer to manufacture a firearm.** **(b) It is unlawful to sell, offer to sell, or transfer a CNC milling machine or three-dimensional printer that has the sole or primary function of manufacturing firearms to any person in this state, other than a state-licensed firearms manufacturer.** **(c) It is unlawful for any person in this state other than a state-licensed firearms manufacturer to possess, purchase, or receive a CNC milling machine or three-dimensional printer that has the sole or primary function of manufacturing firearms.** (d) Subdivisions (b) and (c) do not apply to any of the following: (1) A person who is engaged in the business of selling manufacturing equipment to a state-licensed firearms manufacturer, and who possesses a CNC milling machine or three-dimensional printer with the intent to sell or transfer the CNC milling machine or three-dimensional printer to a state licensed firearms manufacturer. (2) A common carrier licensed under state law, or a motor carrier, air carrier or carrier affiliated with an air carrier through common controlling interest that is subject to Title 49 of the United States Code, or an authorized agent of any such carrier, when acting in the course and scope of duties incident to the receipt, processing, transportation, or delivery of property. **(3) A person who, before June 30, 2022, possessed a CNC milling machine that has the sole or primary function of manufacturing firearms and who, within 90 days after that date, does one of the following:** (A) Sells or transfers the machine to a federally licensed firearms manufacturer or importer. (B) Sells or transfers the machine to a person described in paragraph (1). (C) Removes the machine from this state. (D) Delivers it to a law enforcement agency for destruction.	
		§ 30400. Prohibition of selling, offering to sell, or transfer of firearm precursor part not federally regulated; exceptions; penalties	(a) Except as provided in subdivision (b) and in Section 30420, or except by operation of law, **it shall be unlawful for a person to purchase, sell, offer to sell, or transfer ownership of any firearm precursor part in this state that is not a federally regulated firearm precursor part.** (b) This section does not apply to either of the following: (1) The purchase of a firearm precursor part that is not a federally regulated firearm precursor part by a federally licensed firearms manufacturer or importer, or by a federal licensee authorized to serialize firearms. (2) The sale, offer to sell, or transfer of ownership of a firearm precursor part that is not a federally regulated firearm precursor part to a federally licensed firearms manufacturer or importer, or to a federal licensee authorized to serialize firearms. **(c) A violation of this section is a misdemeanor punishable by imprisonment in a county jail not exceeding six months, by a fine not exceeding one thousand dollars ($1,000), or by both that fine and imprisonment.**	

		§ 3273.60. Definitions	As used in this title, the following definitions apply: **(a) "Digital firearm manufacturing code"** means any digital instructions in the form of computer-aided design files or other code or instructions stored and displayed in electronic format as a digital model that may be used to program a CNC milling machine, a three-dimensional printer, or a similar machine, to manufacture or produce a firearm, including a completed frame or receiver or a firearm precursor part... (c) "Firearm" has the same meaning as in subdivisions (a) and (b) of Section 16520 of the Penal Code. (d) "Three-dimensional printer" means a computer-aided manufacturing device capable of producing a three-dimensional object from a three-dimensional digital model through an additive manufacturing process that involves the layering of two-dimensional cross sections formed of a resin or similar material that are fused together to form a three-dimensional object.	
		§ 30401. Determination of firearm precursor part	(a) The department may, upon receipt of a written request or form prescribed by the department, issue a determination to a person regarding whether an item or kit is a firearm precursor part. (b) Any request or form submitted pursuant to subdivision (a) shall be executed under the penalty of perjury with a complete and accurate description of the item or kit, the name and address of the manufacturer or importer thereof, and a sample of the item or kit for examination. (c) The sample of the item or kit shall include all accessories and attachments relevant to the firearm precursor part determination as each determination is limited to the submitted sample. The sample shall include any associated templates, jigs, molds, equipment, or tools that are made available by the seller, distributor, or manufacturer of the item or kit to the purchaser or recipient of the item or kit, and any instructions, guides, or marketing materials if they will be made available by the seller, distributor, or manufacturer with the item or kit. (d) Upon completion of the examination, the department may return the sample to the person who made the request unless a determination is made that return of the sample would be a, or would place the person in, violation of the law. Unless otherwise stated by the department, a determination made by the department pursuant to this section shall not be deemed by any person to be applicable to, or authoritative with respect to, any other sample, design, model, or configuration.	
		§ 16520. "Firearm" defined	(a) As used in this part, "firearm" means a device, designed to be used as a weapon, from which is expelled through a barrel, a projectile by the force of an explosion or other form of combustion. **(b) As used in the following provisions, "firearm" includes the frame or receiver of the weapon, including both a completed frame or receiver, or a firearm precursor part:** (1) Section 136.2. (2) Section 646.91. (3) Sections 16515 and 16517. (4) Section 16550. (5) Section 16730. (6) Section 16960. (7) Section 16990. (8) Section 17070. (9) Section 17310. (10) Sections 18100 to 18500, inclusive. (11) Section 23690. (12) Sections 23900 to 23925, inclusive. (13) Commencing on July 1, 2026, Sections 25250 to 25275, inclusive. (14) Sections 26500 to 26590, inclusive. (15) Sections 26600 to 27140, inclusive. (16) Sections 27200 to 28490, inclusive. (17) Sections 29010 to 29150, inclusive. (18) Section 29185. (19) Sections 29610 to 29750, inclusive. (20) Sections 29800 to 29905, inclusive. (21) Sections 30150 to 30165, inclusive. (22) Section 31615. (23) Sections 31700 to 31830, inclusive.	
		§ 30425. Manufacture of firearm precursor parts under state or federal contracts	This article does not prohibit the manufacture of firearm precursor parts under contracts approved by agencies of the state or federal government.	
		§ 30470. Repealed by Stats.2022, c. 76 (A.B.1621), § 36, eff. June 30, 2022	**HISTORICAL AND STATUTORY NOTES** The repealed section, added by Stats.2019, c. 730 (A.B.879), § 6, amended by Stats.2020, c. 29 (S.B.118), § 36, related to the electronic approval of purchase or transfer of firearm precursor parts by department, determination of eligibility of purchaser or transferee, development of approval procedure for single firearm precursor part transaction or purchase, provision of firearm precursor parts by vendor without approval prohibited, transaction fee, Firearm Precursor Parts Enforcement Special Fund, and regulations. For legislative findings and declarations, severability, cost reimbursement, urgency effective, and other uncodified provisions relating to Stats.2022, c. 76 (A.B.1621), see Historical and Statutory Notes under Family Code § 6216. West's Ann. Cal. Penal Code § 30470, CA PENAL § 30470 Current with Ch. 1 of 2023-24 2nd Ex.Sess, and all laws through Ch. 1017 of 2024 Reg.Sess.	

		§§ 30405 to 30414. Repealed by Stats.2022, c. 76 (A.B.1621), §§ 30 to 33, eff. June 30, 2022	**HISTORICAL AND STATUTORY NOTES** Section 30405, added by Stats.2019, c. 730 (A.B.879), § 6, amended by Stats.2020, c. 29 (S.B.118), § 24, related to a person prohibited from owning or possessing firearm also prohibited from owning or possessing firearm precursor part, penalties, exemptions, and burden of proof. Section 30406, added by Stats.2019, c. 730 (A.B.879), § 6, amended by Stats.2020, c. 29 (S.B.118), § 25, related to the sale or supply of firearm precursor part to person prohibited from possession, or to person who will make subsequent transfer to person prohibited from possession, and penalties. Section 30412, added by Stats.2019, c. 730 (A.B.879), § 6, amended by Stats.2020, c. 29 (S.B.118), § 26, related to the sale of firearm precursor parts through licensed firearm precursor part vendors, requirements, exceptions, and violations. Section 30414, added by Stats.2019, c. 730 (A.B.879), § 6, amended by Stats.2020, c. 29 (S.B.118), § 27, related to the transportation of firearm precursor part into the state by a resident, delivery to licensed firearm precursor part vendor, exceptions, and violations. For legislative findings and declarations, severability, cost reimbursement, urgency effective, and other uncodified provisions relating to Stats.2022, c. 76 (A.B.1621), see Historical and Statutory Notes under Family Code § 6216. West's Ann. Cal. Penal Code § 30412, CA PENAL § 30412 Current with Ch. 1 of 2023-24 2nd Ex.Sess, and all laws through Ch. 1017 of 2024 Reg.Sess.	
		§ 30420. Application of article; exceptions	**This article does not apply to any of the following persons:** (a) A member of the Armed Forces of the United States or the National Guard, while on duty and acting within the scope and course of employment, or any law enforcement agency or forensic laboratory. (b) A common carrier licensed under state law, or a motor carrier, air carrier or carrier affiliated with an air carrier through common controlling interest that is subject to Title 49 of the United States Code, or an authorized agent of any such carrier, when acting in the course and scope of duties incident to the receipt, processing, transportation, or delivery of property. **(c) An authorized representative of a city, county, city and county, or state or federal government that receives an unserialized firearm precursor part as part of an authorized, voluntary program in which the governmental entity is buying or receiving firearms or firearm precursor parts from private individuals.**	
		West's Ann.Cal.Penal Code Pt. 6, T. 4, D. 10, Ch. 1.5, Art. 3, Refs & Annos	**Editors' Notes** **GENERAL NOTES** **2025 Electronic Pocket Part Update** **<Article 3, added as "Firearm Precursor Parts Purchase Authorizations" by Stats.2019, c. 730 (A.B.879), § 6, eff. Jan. 1, 2020, consisting of § 30470, was repealed by Stats.2022, c. 76 (A.B.1621), § 36, eff. June 30, 2022.>** West's Ann. Cal. Penal Code Pt. 6, T. 4, D. 10, Ch. 1.5, Art. 3, Refs & Annos, CA PENAL Pt. 6, T. 4, D. 10, Ch. 1.5, Art. 3, Refs & Annos Current with Ch. 1 of 2023-24 2nd Ex.Sess, and all laws through Ch. 1017 of 2024 Reg.Sess. End of Document© 2025 Thomson Reuters. No claim to original U.S. Government Works.	
2	**MASSACHUSETTS**	M.G.L.A. 140 § 121D	(a) No person shall use a 3-dimensional printer or computer numerical control milling machine to manufacture or assemble any firearm within the commonwealth without a valid license to carry firearms under section 131. (b) No person shall sell, offer to sell or transfer a 3-dimensional printer or computer numerical control milling machine that has the primary or intended function of manufacturing or assembling firearms to any person in the commonwealth. A 3-dimensional printer or computer numerical milling machine has the primary or intended function of manufacturing or assembling firearms if the printer or machine is advertised, marketed or promoted to manufacture or assemble firearms, regardless of whether the printer or machine is otherwise described or classified as having other functions or as a general-purpose printer or machine. (c) This section shall not apply to 3-dimensional printers or computer numerical control milling machines that are: (i) possessed by a forensic laboratory; (ii) being delivered to law enforcement for the sole purpose of their destruction; (iii) possessed by common carriers and their duly authorized employees and agents while performing the regular and ordinary transport of firearms as merchandise for customers licensed to permit such transport; (iv) possessed by or sold to a federally licensed manufacturer of firearms; or (v) the property of the government of the United States. **(d) A violation of this section shall be punishable by imprisonment for not more than 1 year or by a fine of not more than $5,000 per firearm per violation or both such fine and imprisonment.**	Serial numbers and background checks for all firearms and component parts. All ghost guns must be reported to officials.

3	**ILLINOIS**	720 ILCS 5/24-5.1 § 24-5.1. Serialization of unfinished frames or receivers; prohibition on unserialized firearms; exceptions; penalties.	"Frame or receiver" means a part of a firearm that, when the complete weapon is assembled, is visible from the exterior and provides housing or a structure designed to hold or integrate one or more fire control components, even if pins or other attachments are required to connect those components to the housing or structure. For models of firearms in which multiple parts provide such housing or structure, the part or parts that the Director of the federal Bureau of Alcohol, Tobacco, Firearms and Explosives has determined are a frame or receiver constitute the frame or receiver. For purposes of this definition, "fire control component" means a component necessary for the firearm to initiate, complete, or continue the firing sequence, including any of the following: hammer, bolt, bolt carrier, breechblock, cylinder, trigger mechanism, firing pin, striker, or slide rails... "Three-dimensional printer" means a computer or computer-drive machine capable of producing a three-dimensional object from a digital model. "Undetectable firearm" means (1) a firearm constructed entirely of non-metal substances; (2) a firearm that, after removal of all parts but the major components of the firearm, is not detectable by walk-through metal detectors calibrated and operated to detect the security exemplar; or (3) a firearm that includes a major component of a firearm, which, if subject to the types of detection devices commonly used at airports for security screening, would not generate an image that accurately depicts the shape of the component. "Undetectable firearm" does not include a firearm subject to the provisions of 18 U.S.C. 922(p)(3) through (6). "Unfinished frame or receiver" means any forging, casting, printing, extrusion, machined body, or similar article that: (1) has reached a stage in manufacture where it may readily be completed, assembled, or converted to be a functional firearm; or (2) is marketed or sold to the public to become or be used as the frame or receiver of a functional firearm once completed, assembled, or converted. "Unserialized" means lacking a serial number imprinted by: (1) a federal firearms manufacturer, federal firearms importer, federal firearms dealer, or other federal licensee authorized to provide marking services, pursuant to a requirement under federal law; or	Serial numbers and background checks for all firearms and component parts
		815 ILCS 505/2DDDD § 2DDDD. Sale and marketing of firearms.	**"Firearm-related product"** means a firearm, firearm ammunition, a firearm precursor part, a firearm component, or a firearm accessory that meets any of the following conditions: (1) the item is sold, made, or distributed in Illinois; (2) the item is intended to be sold or distributed in Illinois; or (3) the item is or was possessed in Illinois, and it was reasonably foreseeable that the item would be possessed in Illinois... "Straw purchaser" means a person who (i) knowingly purchases or attempts to purchase a firearm-related product with intent to deliver that firearm-related product to another person who is prohibited by federal or State law from possessing a firearm-related product or (ii) intentionally provides false or misleading information on a Bureau of Alcohol, Tobacco, Firearms and Explosives firearms transaction record form to purchase a firearm-related product with the intent to deliver that firearm-related product to another person... ...(b) It is an unlawful practice within the meaning of this Act for any firearm industry member, through the sale, manufacturing, importing, or marketing of a firearm-related product, to do any of the following: (1) Knowingly create, maintain, or contribute to a condition in Illinois that endangers the safety or health of the public by conduct either unlawful in itself or unreasonable under all circumstances, including failing to establish or utilize reasonable controls. Reasonable controls include reasonable procedures, safeguards, and business practices that are designed to: (A) prevent the sale or distribution of a firearm-related product to a straw purchaser, a person prohibited by law from possessing a firearm, or a person who the firearm industry member has reasonable cause to believe is at substantial risk of using a firearm-related product to harm themselves or another individual or of possessing or using a firearm-related product unlawfully; (B) prevent the loss or theft of a firearm-related product from the firearm industry member; or (C) comply with all provisions of applicable local, State, and federal law, and do not otherwise promote the unlawful manufacture, sale, possession, marketing, or use of a firearm-related product. (2) Advertise, market, or promote a firearm-related product in a manner that recklessly creates a	
4	**NEW YORK**	§ 265.00 Definitions	32. [As added by L.2021, c. 519, § 2. See, also, subd. 32 below.] **"Unfinished frame or receiver"** means any unserialized material that does not constitute the frame or receiver of a firearm, rifle or shotgun but that has been shaped or formed in any way for the purpose of becoming the frame or receiver of a firearm, rifle or shotgun, and which may readily be made into a functional frame or receiver through milling, drilling or other means. 32. [As added by L.2021, c. 520, § 3. See, also, subd. 32 above.] **"Ghost gun"** means a firearm, rifle or shotgun that does not comply with the provisions of section 265.07 of this article and is not serialized.	Serial numbers and background checks for component parts, all ghost guns must be reported to officials, no plastic undetectable guns.

		§ 265.07. Registration and serialization of firearms, rifles, shotguns, finished frames or receivers, and unfinished frames or receivers	(1) For the purposes of this section, "unfinished frame or receiver" means any unserialized material that does not constitute the frame or receiver of a firearm, rifle or shotgun but that has been shaped or formed in any way for the purpose of becoming the frame or receiver of a firearm, rifle or shotgun, and which may readily be made into a functional frame or receiver through milling, drilling or other means. (2) On or before the effective date of this section, and promptly upon taking possession thereof at any time thereafter, any person licensed as a gunsmith, or required to be, or a dealer in firearms pursuant to section 400.00 of this chapter, who is in possession of an unserialized firearm, rifle, shotgun, finished frame or receiver, or unfinished frame or receiver shall: (a) engrave, cast, stamp or otherwise conspicuously place both a unique serial number and his or her name (or recognized abbreviation) on such firearm, rifle, shotgun, finished frame or receiver, or unfinished frame or receiver, in a manner that satisfies or exceeds the requirements imposed on licensed importers and manufacturers pursuant to section (i) of Section 923 of Title 18 of the United States Code and regulations issued pursuant thereto at the time of such assembly; and (b) register with the division of criminal justice services in accordance with regulations promulgated by such division any such firearm, rifle or shotgun, finished frame or receiver, or unfinished frame or receiver. **Any person licensed as a gunsmith, or required to be, or a dealer in firearms pursuant to section 400.00 of this chapter who fails to comply with the provisions of this section shall be guilty of a class E felony.**	
		§ 265.64 Criminal sale of a frame or receiver in the **1st degree**	A person is **guilty of criminal sale of a frame or receiver in the first degree** when, knowing they are unserialized frames or receivers or unfinished frames or receivers, such person unlawfully sells, exchanges, gives or disposes of a total of ten or more unserialized frames or receivers or unfinished frames or receivers in a period of not more than one year, provided that for a period of six months after the effective date of this section, a person shall not be guilty of criminal sale of a frame or receiver in the first degree if such person: (a) voluntarily surrenders such unserialized frames or receivers or unfinished frames or receivers to any law enforcement official designated pursuant to subparagraph (f) of paragraph one of subdivision (a) of section 265.20 of this article; or (b) sells, exchanges, gives or disposes of such unserialized frames or receivers or unfinished frames or receivers to a gunsmith licensed pursuant to section 400.00 of this chapter. **Criminal sale of a frame or receiver in the first degree is a class D felony.**	
		§ 265.63 Criminal sale of a frame or receiver in the **2nd degree**	A person is guilty of criminal sale of a frame or receiver in the second degree when, knowing it is an unserialized frame or receiver or an unfinished frame or receiver, such person unlawfully sells, exchanges, gives or disposes of such unserialized frame or receiver or unfinished frame or receiver, provided that for a period of six months after the effective date of this section, a person shall not be guilty of criminal sale of a frame or receiver in the second degree if such person: (a) voluntarily surrenders such unserialized frame or receiver or unfinished frame or receiver to any law enforcement official designated pursuant to subparagraph (f) of paragraph one of subdivision (a) of section 265.20 of this article; or (b) sells, exchanges, gives, or disposes of such unserialized frame or receiver or unfinished frame or receiver to a gunsmith licensed pursuant to section 400.00 of this chapter. **Criminal sale of a frame or receiver in the second degree is a class E felony.**	
		§ 265.61. Criminal sale of a ghost gun in the 1st degree	1. A person is guilty of criminal sale of a ghost gun in the first degree when, knowing or having reason to know they are ghost guns, he or she sells, exchanges, gives or disposes of ten or more ghost guns to another person or persons. 2. Notwithstanding subdivision one of this section, a person shall not be guilty of criminal sale of a ghost gun in the first degree if he or she: (a) voluntarily surrenders such ghost guns to any law enforcement official designated pursuant to subparagraph (f) of paragraph one of subdivision (a) of section 265.20 of this article; or (b) within a period of six months after the effective date of this section sells, exchanges, gives, or disposes of such ghost guns to a gunsmith licensed pursuant to section 400.00 of this chapter. **Criminal sale of a ghost gun in the first degree is a class D felony.**	
		§ 265.60. Criminal sale of a ghost gun in the **2nd degree**	1. A person is guilty of criminal sale of a ghost gun in the second degree when, knowing or having reason to know it is a ghost gun, he or she sells, exchanges, gives or disposes of a ghost gun to another person. 2. Notwithstanding subdivision one of this section, a person shall not be guilty of criminal sale of a ghost gun in the second degree when such person: (a) voluntarily surrenders such ghost gun to any law enforcement official designated pursuant to subparagraph (f) of paragraph one of subdivision (a) of section 265.20 of this article; or (b) within a period of six months after the effective date of this section sells, exchanges, gives, or disposes of such ghost gun to a gunsmith licensed pursuant to section 400.00 of this chapter. **Criminal sale of a ghost gun in the second degree is a class E felony.**	
		§ 898-b. Prohibited activities	1. No gun industry member, by conduct either unlawful in itself or unreasonable under all the circumstances shall knowingly or recklessly create, maintain or contribute to a condition in New York state that endangers the safety or health of the public through the sale, manufacturing, importing or marketing of a qualified product. 2. All gun industry members who manufacture, market, import or offer for wholesale or retail sale any qualified product in New York state shall establish and utilize reasonable controls and procedures to prevent its qualified products from being possessed, used, marketed or sold unlawfully in New York state.	

		§ 265.01 Criminal possession of a weapon in the fourth degree	A person is guilty of criminal possession of a weapon in the fourth degree when:... (9) [As added by L.2021, c. 520, § 4. See, also, subd. (9) above.] **Such person is not licensed as a gunsmith or a dealer in firearms pursuant to section 400.00 of this chapter and, knowing it is a ghost gun, such person possesses a ghost gun,** provided that a person shall not be guilty under this subdivision when he or she (a) voluntarily surrenders such ghost gun to any law enforcement official designated pursuant to subparagraph (f) of paragraph one of subdivision (a) of section 265.20 of this article; or (b) for a period of six months after the effective date of this section possesses a ghost gun prior to serialization and registration of such ghost gun pursuant to section 265.07 of this article. **(10) Such person is not licensed as a gunsmith or dealer in firearms pursuant to section 400.00 of this chapter and, knowing it is an unserialized frame or receiver or unfinished frame or receiver, such person possesses an unserialized frame or receiver or unfinished frame or receiver, provided that for a period of six months after the effective date of this subdivision,** a person shall not be guilty under this subdivision when such person: (a) voluntarily surrenders such unserialized frame or receiver or unfinished frame or receiver to any law enforcement official designated pursuant to subparagraph (f) of paragraph one of subdivision (a) of section 265.20 of this article; or (b) possesses such unserialized frame or receiver or unfinished frame or receiver prior to serialization of such unserialized frame or receiver or unfinished frame or receiver in accordance with the requirements imposed on licensed importers and licensed manufacturers pursuant to subsection (i) of Section 923 of Title 18 of the United States Code and regulations issued pursuant thereto, except for antique firearms as defined in subdivision fourteen of section 265.00 of this article, as added by chapter nine hundred eighty-six of the laws of nineteen hundred seventy-four, or any firearm, rifle or shotgun manufactured prior to nineteen hundred sixty-eight. Criminal possession of a weapon in the fourth degree is a class A misdemeanor.	
5	**CONNECTICUT**	§ 29-36a. Manufacture of a firearm. Acquisition of unique serial number or other mark of identification. Exceptions. Penalty	(a) No person shall complete the manufacture of a firearm without subsequently (1) obtaining a unique serial number or other mark of identification from the Department of Emergency Services and Public Protection pursuant to subsection (b) of this section, and (2) engraving upon or permanently affixing to the firearm such serial number or other mark in a manner that conforms with the requirements imposed on licensed importers and licensed manufacturers of firearms pursuant to 18 USC 923(i), as amended from time to time, and any regulation adopted thereunder. (b) Not later than thirty days after a person completes the manufacture of a firearm, such person shall notify the department of such manufacture and provide any identifying information to the department concerning the firearm and the owner of such firearm, in a manner prescribed by the Commissioner of Emergency Services and Public Protection. Upon receiving a properly submitted request for a unique serial number or other mark of identification from a person who completes manufacture of a firearm, the department shall determine if such person is prohibited from purchasing a firearm and if not, shall issue to such person a unique serial number or other mark of identification immediately and in no instance more than three business days after the department receives such request. Issuance of a unique serial number or other mark of identification pursuant to this subsection shall not be evidence that the firearm is otherwise lawfully possessed. (c) (1) On and after January 1, 2024, no person shall possess a firearm without a serial number or other mark of identification unless such person has (A) declared possession of such firearm pursuant to subdivision (2) or (3) of this subsection, or (B) applied to obtain a unique serial number or other mark of identification from the Department of Emergency Services and Public Protection pursuant to subsections (a) and (b) of this section and such person has not yet received such serial number or other mark of identification. (2) Any person who, prior to January 1, 2024, lawfully possesses a firearm without a serial number or other mark of identification manufactured prior to October 1, 2019, shall apply by January 1, 2024, or, if such person is a member of the military or naval forces of this state or of the United States and is unable to apply by January 1, 2024, because such member is or was on official duty outside of this state, shall apply within ninety days of returning to	Serial numbers and background checks for component parts, all ghost guns must be reported to officials, no plastic undetectable guns.

		§ 53-206j. Sale, delivery or transfer of unfinished frame or lower receiver. Prohibited. Exceptions. Penalty	**(a) No person shall purchase or receive or sell, deliver or otherwise transfer an unfinished frame or lower receiver, except as provided in: (1) Subsections (b) and (c) of this section; or (2) subsection (d) of this section; or (3) subsection (e) of this section.** **(b) The procedures for the purchase or receipt or sale, delivery or other transfer of an unfinished frame or lower receiver shall be the same procedures as apply to the purchase or receipt or sale, delivery or other transfer of a pistol or revolver under subsections (b) to (e), inclusive, of section 29-33, provided such purchase or receipt or sale, delivery or other transfer of an unfinished frame or lower receiver is in accordance with the provisions of subsection (c) of this section.** **(c) (1) No person shall sell, deliver or otherwise transfer an unfinished frame or lower receiver pursuant to subsection (b) of this section that does not have a unique serial number or other mark of identification, obtained pursuant to: (A) The serial numbering program of the federal Bureau of Alcohol, Tobacco, Firearms and Explosives, or (B) subdivisions (2) and (3) of this subsection.** (2) A person may obtain a unique serial number or other mark of identification for an unfinished frame or lower receiver by providing to the Department of Emergency Services and Public Protection any identifying information concerning the unfinished frame or lower receiver and the owner of such unfinished frame or lower receiver, in a manner prescribed by the Commissioner of Emergency Services and Public Protection. Upon receiving a properly submitted request for a unique serial number or other mark of identification for an unfinished frame or lower receiver, the Department of Emergency Services and Public Protection shall determine if such person is prohibited from purchasing a firearm, and if not, shall issue to such person a unique serial number or other mark of identification immediately and in no instance more than (A) three business days after the Department of Emergency Services and Public Protection receives such request, or (B) ten business days after the system to distribute a unique serial number or other mark of identification pursuant to section 29-36b is operational, whichever date is later. [illegible]	
6	**NEW JERSEY**	2C:39-9. Manufacture, transport, disposition and defacement of weapons and dangerous instruments and appliances	i. Transporting firearms into this State for an unlawful sale or transfer. Any person who knowingly transports, ships or otherwise brings into this State any firearm for the purpose of unlawfully selling, transferring, giving, assigning or otherwise disposing of that firearm to another individual is guilty of a crime of the second degree. Any motor vehicle used by a person to transport, ship, or otherwise bring a firearm into this State for unlawful sale or transfer shall be subject to forfeiture in accordance with the provisions of N.J.S.2C:64-1 et seq.; provided however, this forfeiture provision shall not apply to innocent owners, nor shall it affect the rights of a holder of a valid lien. The temporary transfer of a firearm shall not constitute a violation of this subsection if that firearm is transferred: (1) while hunting or target shooting in accordance with the provisions of section 1 of P.L.1992, c. 74 (C.2C:58-3.1); (2) for shooting competitions sponsored by a licensed dealer, law enforcement agency, legally recognized military organization, or a rifle or pistol club which has filed a copy of its charter with the superintendent in accordance with the provisions of section 1 of P.L.1992, c. 74 (C.2C:58-3.1); or (3) for participation in a training course conducted by a certified instructor in accordance with the provisions of section 1 of P.L.1997, c. 375 (C.2C:58-3.2). The transfer of any firearm that uses air or carbon dioxide to expel a projectile; or the transfer of an antique firearm shall not constitute a violation of this subsection. i. Transporting firearms into this State for an unlawful sale or transfer. Any person who knowingly transports, ships or otherwise brings into this State any firearm for the purpose of unlawfully selling, transferring, giving, assigning or otherwise disposing of that firearm to another individual is guilty of a crime of the second degree. Any motor vehicle used by a person to transport, ship, or otherwise bring a firearm into this State for unlawful sale or transfer shall be subject to forfeiture in accordance with the provisions of N.J.S.2C:64-1 et seq.; provided however, this forfeiture provision shall not apply to innocent owners, nor shall it affect the rights of a holder of a valid lien. The temporary transfer of a firearm shall not constitute a violation of this subsection if that firearm is transferred: (1) while hunting or target shooting in accordance with the provisions of section 1 of P.L.1992, c. 74 (C.2C:58-3.1); (2) for shooting competitions sponsored by a licensed dealer, law enforcement agency, legally recognized military [illegible]	Serial numbers and background checks for component parts, all ghost guns must be reported to officials, no 3D printing of guns, no distribution of 3D printing instructions, no plastic undetectable guns.

7	**HAWAII**	HRS § 134-1	As used in this part: "Firearm accessory" means an attachment or device designed or adapted to be inserted into, affixed onto, or used in conjunction with a firearm that is designed, intended, or functions to alter or enhance the firing capabilities of the firearm, the lethality of the firearm, or a shooter's ability to hold or use a firearm. "Firearm industry member" means a person, firm, corporation, company, partnership, society, joint stock company, or any other entity or association engaged in the manufacture, distribution, importation, marketing, wholesale, or retail sale of firearm-related products. "Firearm precursor part" means any forging, casting, printing, extrusion, machined body, or similar article that has reached a state in manufacture where it may readily be completed, assembled, or converted to be used as the frame or receiver of a functional firearm, or that is marketed or sold to the public to become or be used as the frame or receiver of a functional firearm once completed, assembled, or converted. "Firearm-related product" means a firearm, ammunition, a firearm precursor part, a firearm component, or a firearm accessory that meets any of the following conditions: (1) The item is sold, made, or distributed in the State; (2) The item is intended to be sold or distributed in the State; or (3) The item is or was possessed in the State and it was reasonably foreseeable that the item would be possessed in the State. "Reasonable controls" means reasonable procedures, acts, or practices that are designed, implemented, and enforced to do the following: (1) Prevent the sale or distribution of a firearm-related product to a straw purchaser, a firearm trafficker, a person prohibited from possessing a firearm under federal or state law, or a person who the firearm industry member has reasonable cause to believe is at substantial risk of using a firearm-related product to harm themselves or another or of possessing or using a firearm-related product unlawfully; (2) Prevent the loss or theft of a firearm-related product from the firearm industry member; and	Serial numbers and background checks for component parts, all ghost guns must be reported to officials, no 3D printing of guns
		HRS § 134-7	**(RE ownership, posession or control prohibted for firearms or ammunition)**...(j) Any person violating subsection (a) or (b) shall be guilty of a class C felony; provided that any felon violating subsection (b) shall be guilty of a class B felony. Any person violating subsection (c), (d), (e), (f), (g), or (h) shall be guilty of a misdemeanor.	
		§ 134-3. Registration, mandatory, exceptions	**(RE registration, mandatory, exceptions)** (a) Every resident or other person arriving in the State who brings or by any other manner causes to be brought into the State a firearm of any description, whether usable or unusable, serviceable or unserviceable, modern or antique, shall register and submit to physical inspection the firearm within five days after arrival of the person or of the firearm, whichever arrives later, with the chief of police of the county of the person's place of business or, if there is no place of business, the person's residence or, if there is neither a place of business nor residence, the person's place of sojourn... Every person registering a firearm under this subsection shall be fingerprinted and photographed by the police department of the county of registration; provided that this requirement shall be waived where fingerprints and photographs are already on file with the police department. The police department shall perform an inquiry on the person by using the International Justice and Public Safety Network, including the United States Immigration and Customs Enforcement query, the National Crime Information Center, and the National Instant Criminal Background Check System, pursuant to section 846-2.7 before any determination to register a firearm is made. Any person attempting to register a firearm, a firearm receiver, or the parts used to assemble a firearm, and who is found to be disqualified from ownership, possession, or control of firearms or ammunition under section 134-7, shall surrender or dispose of all firearms and ammunition pursuant to section 134-7.3. ...If the firearm has been assembled from separate parts and an unfinished firearm receiver, the entity that registered the firearm receiver shall be recorded in the space provided for the name of the manufacturer and importer, and the phrase "assembled from parts" shall be recorded in the space provided for model. If the firearm has been assembled from parts created using a three-dimensional printer, the entity that registered the firearm receiver shall be recorded in the space provided for the name of the manufacturer and importer, and the phrase "3-D printer" shall be recorded in the space provided for model. If the firearm has no serial number, the registration number shall be entered in the space provided for the serial number, and the registration number shall be engraved upon the receiver portion of the firearm before registration. On firearms assembled from parts created using a three-dimensional printer, the registration number shall be engraved on stainless steel, permanently embedded to the firearm receiver during fabrication or construction, and visible when the firearm is assembled. Firearms and firearm receivers with	
		HRS §134-10.2	Manufacturing, purchasing, or obtaining firearm parts to assemble a firearm having no serial number; penalty. (a) A person who is not licensed to manufacture a firearm under section 134-31, or who is not a dealer licensed by the United States Department of Justice, shall not, for the purpose of assembling a firearm, possess, purchase, produce with a three-dimensional printer, or otherwise obtain separately, or as part of a kit: (1) A firearm receiver that is not imprinted with a serial number registered with a federally licensed manufacturer; (2) A firearm receiver that has not been provided a serial number that may be registered in accordance with section 134-3(c); or (3) Any combination of parts from which a firearm having no serial number may be readily assembled; provided that the parts do not have the capacity to function as a firearm unless assembled. (b) Violation of this section is a class C felony.	
8	**MARYLAND**	§ 5-701. Definitions	Unfinished frame or receiver **(h) "Unfinished frame or receiver"** means a forged, cast, printed, extruded, or machined body or similar article that has reached a stage in manufacture where it may readily be completed, assembled, or converted to be used as the frame or receiver of a functional firearm.	Serial numbers and background checks for all firearms and component parts. All ghost guns must be reported to officials.

		§ 5-702. Application of subtitle	This subtitle does not apply to: (1) a firearm that: (i) was manufactured before October 22, 1968; or (ii) is an antique firearm; (2) a sale, an offer to sell, a transfer, or a delivery of a firearm or an unfinished frame or receiver to, or possession of a firearm or unfinished frame or receiver by: (i) a federally licensed firearms dealer; (ii) a federally licensed firearms manufacturer; or (iii) a federally licensed firearms importer; or (3) a transfer or surrender of a firearm or an unfinished frame or receiver to a law enforcement agency.	
		§ 5-101. Definitions	Firearm (h)(1) "Firearm" means: (i) a weapon that expels, is designed to expel, or may readily be converted to expel a projectile by the action of an explosive; (ii) the frame or receiver of such a weapon; or (iii) an unfinished frame or receiver, as defined in § 5-701 of this title. (2) "Firearm" includes a starter gun.	
		§ 5-703. Serial numbers required	**Sale or transfer** (a)(1) A person may not purchase, receive, sell, offer to sell, or transfer an unfinished frame or receiver unless it is required by federal law to be, and has been, imprinted with a serial number by a federally licensed firearms manufacturer or federally licensed firearms importer in compliance with all federal laws and regulations applicable to the manufacture and import of firearms. (2) Except as provided in paragraph (1) of this subsection, a person may not sell, offer to sell, or transfer a firearm unless it is imprinted with a serial number as described under subsection (b) of this section. **Possession** (b)(1) This subsection does not apply to: (i) possession of a firearm unless a person knew or reasonably should have known that the firearm was not imprinted with a serial number as described under this subsection; (ii) possession of a firearm that does not comply with the marking requirements described under this subsection by a person who received the firearm through inheritance, and is not otherwise prohibited from possessing the firearm, for a period not exceeding 30 days after inheriting the firearm; or (iii) possession of an unfinished frame or receiver by a person that made or manufactured the unfinished frame or receiver, without the use of any prefabricated parts, and who is not otherwise prohibited from possessing the unfinished frame or receiver, for a period not exceeding 30 days after the person made or manufactured the unfinished frame or receiver. (2) On or after March 1, 2023, a person may not possess a firearm unless: (i) the firearm is required by federal law to be, and has been, imprinted by a federally licensed firearms manufacturer, federally licensed firearms importer, or other federal licensee authorized to provide marking services, with a serial number in compliance with all federal laws and regulations applicable to the manufacture and import of firearms; or (ii) the firearm: 1. has been imprinted by a federally licensed firearms dealer, federal firearms manufacturer, or other federal licensee authorized to provide marking services, with:	
9	**WASHINGTON**	9.41.010. Definitions (Effective January 1, 2025)	**(20) "Firearm"** means a weapon or device from which a projectile or projectiles may be fired by an explosive such as gunpowder. For the purposes of RCW 9.41.040, **"firearm" also includes frames and receivers.** "Firearm" does not include a flare gun or other pyrotechnic visual distress signaling device, or a powder-actuated tool or other device designed solely to be used for construction purposes. **(21)(a) "Frame or receiver"** means a part of a firearm that, when the complete firearm is assembled, is visible from the exterior and provides housing or a structure designed to hold or integrate one or more fire control components, even if pins or other attachments are required to connect the fire control components. Any such part identified with a serial number shall be presumed, absent an official determination by the bureau of alcohol, tobacco, firearms, and explosives or other reliable evidence to the contrary, to be a frame or receiver. (b) For purposes of this subsection, "fire control component" means a component necessary for the firearm to initiate, complete, or continue the firing sequence, including any of the following: Hammer, bolt, bolt carrier, breechblock, cylinder, trigger mechanism, firing pin, striker, or slide rails. (22) "Gun" has the same meaning as firearm.... **(49) "Undetectable firearm"** means any firearm that is not as detectable as 3.7 ounces of 17-4 PH stainless steel by walk-through metal detectors or magnetometers commonly used at airports or any firearm where the barrel, the slide or cylinder, or the frame or receiver of the firearm would not generate an image that accurately depicts the shape of the part when examined by the types of X-ray machines commonly used at airports. **(50)(a) "Unfinished frame or receiver"** means a frame or receiver that is partially complete, disassembled, or inoperable, that: (i) Has reached a stage in manufacture where it may readily be completed, assembled, converted, or restored to a functional state; or (ii) is marketed or sold to the public to become or be used as the frame or receiver of a functional firearm once finished or completed, including without limitation products marketed or sold to the public as an 80 percent frame or receiver or unfinished frame or receiver.	Serial numbers and background checks for component parts, no plastic undetectable guns

		9.41.327. Unfinished frames or receivers--Exceptions--Penalties	(1) After March 10, 2023, no person may knowingly or recklessly possess, transport, or receive an **unfinished frame or receiver,** unless: (a) The party possessing, transporting, or receiving the unfinished frame or receiver is a law enforcement agency or a federal firearms importer, federal firearms manufacturer, or federal firearms dealer; or (b) the unfinished frame or receiver has been imprinted with a serial number issued by a federal firearms importer, federal firearms manufacturer, or federal firearms dealer. (2) No person may sell, offer to sell, transfer, or purchase an **unfinished frame or receiver,** unless: (a) The party purchasing the unfinished frame or receiver is a federal firearms importer, federal firearms manufacturer, or federal firearms dealer; or (b) the unfinished frame or receiver has been imprinted with a serial number issued by a federal firearms importer, federal firearms manufacturer, or federal firearms dealer. (3) Subsection (1) of this section does not apply to any **unfinished frame or receiver** that has been imprinted by a federal firearms dealer or other federal licensee authorized to provide marking services as provided for in RCW 9.41.328. **(4)(a) Any person who violates this section commits a civil infraction and shall be assessed a monetary penalty of $500.** (b) If a person previously has been found to have violated this section, then the person is guilty of a misdemeanor punishable under chapter 9A.20 RCW for each subsequent violation of this section. (c) If a person previously has been found to have violated this section two or more times, then the person is guilty of a gross misdemeanor punishable under chapter 9A.20 RCW for each subsequent violation of this section. (d) If a person violates this section by possessing, transporting, receiving, selling, offering to sell, transferring, or purchasing three or more unfinished frames or receivers at a time, then the person is guilty of a gross misdemeanor punishable under chapter 9A.20 RCW for each violation of this section. (e) A person commits a separate violation of this section for each and every unfinished frame or receiver to which this section applies.	
		9.41.328. Imprinting a firearm or unfinished frame or receiver	**(Federal firearm)** (1) A federal firearms dealer or other federal licensee authorized to provide marking services for firearms may imprint a firearm or unfinished frame or receiver with a serial number. (2) The **firearm or unfinished frame or receiver** shall be imprinted with the licensee's abbreviated federal firearms license number as a prefix (which is the first three and last five digits) followed by a hyphen, and then followed by a number as a suffix, e.g., "12345678-(number)." The serial number must be placed in a manner that accords with the requirements under federal law for affixing serial numbers to firearms, including the requirements that the serial number be at the minimum size and depth, and not susceptible to being readily obliterated, altered, or removed. (3) The serial number must not duplicate any serial numbers placed by the federal firearms dealer or other federal licensee on any other firearm or unfinished frame or receiver. (4) Whenever a federal firearms dealer or other federal licensee imprints a firearm or unfinished frame or receiver with a serial number, the licensee shall retain records that accord with the requirements under federal law in the case of the sale of a firearm.	
		9.41.190. Unlawful firearms--Exceptions	(1) Except as otherwise provided in this section, it is unlawful for any person to: (a) Manufacture, own, buy, sell, loan, furnish, transport, or have in possession or under control, any machine gun, bump-fire stock, undetectable firearm, short-barreled shotgun, or short-barreled rifle; (b) Manufacture, own, buy, sell, loan, furnish, transport, or have in possession or under control, any part designed and intended solely and exclusively for use in a machine gun, bump-fire stock, undetectable firearm, short-barreled shotgun, or short-barreled rifle, or in converting a weapon into a machine gun, short-barreled shotgun, or short-barreled rifle; (c) Assemble or repair any machine gun, bump-fire stock, undetectable firearm, short-barreled shotgun, or short-barreled rifle; or (d) Manufacture, cause to be manufactured, assemble, or cause to be assembled, an untraceable firearm with the intent to sell the untraceable firearm. (2) It is not unlawful for a person to manufacture, own, buy, sell, loan, furnish, transport, assemble, or repair, or have in possession or under control, a short-barreled rifle, or any part designed or intended solely and exclusively for use in a short-barreled rifle or in converting a weapon into a short-barreled rifle, if the person is in compliance with applicable federal law. (3) Subsection (1) of this section shall not apply to: (a) Any peace officer in the discharge of official duty or traveling to or from official duty, or to any officer or member of the armed forces of the United States or the state of Washington in the discharge of official duty or traveling to or from official duty; or (b) A person, including an employee of such person if the employee has undergone fingerprinting and a background check, who or which is exempt from or licensed under federal law, and engaged in the production, manufacture, repair, or testing of machine guns, bump-fire stocks, short-barreled shotguns, or short-barreled rifles: (i) To be used or purchased by the armed forces of the United States; (ii) To be used or purchased by federal, state, county, or municipal law enforcement agencies; or (iii) For exportation in compliance with all applicable federal laws and regulations.	

		9.41.326. Untraceable firearms--Exceptions--Penalties	**(1) No person may manufacture, cause to be manufactured, assemble, or cause to be assembled an untraceable firearm.** **(2) After March 10, 2023, no person may knowingly or recklessly possess, transport, or receive an untraceable firearm, unless the party possessing, transporting, or receiving the untraceable firearm is a law enforcement agency or a federal firearms importer, federal firearms manufacturer, or federal firearms dealer.** **(3) No person may sell, offer to sell, transfer, or purchase an untraceable firearm.** (4) Subsections (2) and (3) of this section do not apply to any firearm that: (a) Has been rendered permanently inoperable; (b) Is an antique firearm, as defined in 18 U.S.C. Sec. 921(a)(16); (c) Was manufactured before 1968; or (d) Has been imprinted by a federal firearms dealer or other federal licensee authorized to provide marking services as provided for in RCW 9.41.328. **(5)(a) Any person who violates this section commits a civil infraction and shall be assessed a monetary penalty of $500.** (b) If a person previously has been found to have violated this section, then the person is guilty of a misdemeanor punishable under chapter 9A.20 RCW for each subsequent violation of this section. (c) If a person previously has been found to have violated this section two or more times, then the person is guilty of a gross misdemeanor punishable under chapter 9A.20 RCW for each subsequent violation of this section. (d) If a person violates this section by manufacturing, causing to be manufactured, assembling, causing to be assembled, possessing, transporting, receiving, selling, offering to sell, transferring, or purchasing three or more untraceable firearms at a time, then the person is guilty of a gross misdemeanor punishable under chapter 9A.20 RCW for each violation of this section.	
		7.80.120. Monetary penalties--Restitution	(1) A person found to have committed a civil infraction shall be assessed a monetary penalty. (a) The maximum penalty and the default amount for a class 1 civil infraction shall be $250, not including statutory assessments, except for an infraction of state law involving (i) potentially dangerous litter as specified in *RCW 70A.200.060(4), in which case the maximum penalty and default amount is $500; or (ii) a person's refusal to submit to a test or tests pursuant to RCW 79A.60.040 and 79A.60.700, in which case the maximum penalty and default amount is $1,000; or (iii) the misrepresentation of service animals under RCW 49.60.214, in which case the maximum penalty and default amount is $500; **or (iv) untraceable firearms pursuant to RCW 9.41.326 or unfinished frames or receivers pursuant to RCW 9.41.327, in which case the maximum penalty and default amount is $500;** or (v) the failure to report the loss or theft of a firearm under RCW 9.41.368, in which case the maximum penalty and default amount is $1,000;...	
10	**COLORADO**	§ 18-12-101. Peace officer affirmative defense--definitions	**(c.5) "Frame or receiver of a firearm"** means a part of a firearm that, when the complete firearm is assembled, is visible from the exterior and provides housing or a structure designed to hold or integrate one or more fire control components, even if pins or other attachments are required to connect the fire control components. Any part of a firearm imprinted with a serial number is presumed to be a frame or receiver of a firearm, unless the federal bureau of alcohol, tobacco, firearms, and explosives makes an official determination otherwise or there is other reliable evidence to the contrary. **(k) "Three-dimensional printer" or "3-D printer"** means a computer-aided manufacturing device capable of producing a three-dimensional object from a three-dimensional digital model through an additive manufacturing process that involves the layering of two-dimensional cross sections formed of a resin or similar material that are fused together to form a three-dimensional object. **(l) "Unfinished frame or receiver"** means any forging, casting, printing, extrusion, machined body, or similar article that has reached a stage in manufacture when it may readily be completed, assembled, or converted to be used as the frame or receiver of a functional firearm; or that is marketed or sold to the public to become or be used as the frame or receiver of a functional firearm once completed, assembled, or converted. (2) It shall be an affirmative defense to any provision of this article that the act was committed by a peace officer in the lawful discharge of his duties.	Serial numbers for component parts.

		§ 39-37-103. Definitions	(3) "Doing business in this state" means the selling, leasing, or delivering in this state, or any activity in this state in connection with the selling, leasing, or delivering in this state, of firearms, firearms precursor parts, or ammunition by a retail sale, for use, storage, distribution, or consumption, within this state by a person who:... (a) Maintains within this state, directly or indirectly or by a subsidiary, an office, distribution facility, salesroom, warehouse, storage place, or other similar place of business, including the employment of a resident of this state who works from a home office in this state; or (b) Solicits, either by direct representatives, indirect representatives, manufacturers' agents, by distribution of catalogues or other advertising, by use of any communication media, or by use of the newspaper, radio, or television advertising media, or by any other means whatsoever, business from persons residing in this state and by reason thereof receiving orders from, or selling or leasing tangible personal property to, such persons residing in this state for use, consumption, distribution, and storage, for use or consumption in this state during the following periods:.. (I) An entire calendar year if, in the previous calendar year, the person has made retail sales of firearms, firearms precursor parts, or ammunition in this state exceeding twenty thousand dollars; or (II) On and after the first day of the month after the ninetieth day after the person has made retail sales of firearms, firearms precursor parts, or ammunition in this state in the current calendar year that exceed twenty thousand dollars... (6) "Firearm" or "gun" means a firearm as defined in section 18-12-101(1)(b.7) and any instrument or device described in section 18-1-901(3)(h), 18-12-401(1)(a), or 18-12-506(2). (7) "Firearm precursor part" or "gun precursor part" means: (a) An unfinished frame or receiver as defined in section 18-12-101(1)(l); (b) A fire control component as defined in section 18-12-101(1)(c.3);	
		§ 6-27-103. Definitions	As used in this part 1, unless the context otherwise requires: (1) "Firearm industry member" means a person, firm, corporation, or any other entity engaged in the manufacture, distribution, importation, marketing, or wholesale or retail sale of a firearm industry product. (2) "Firearm industry product" means: (a) A firearm, as defined in section 18-1-901; (b) Ammunition; (c) A completed or unfinished frame or receiver; (d) A firearm component or magazine; (e) A device marketed or sold to the public that is designed or adapted to be inserted into, affixed onto, or used in conjunction with a firearm, if the device is: (I) Reasonably designed or intended to be used to increase a firearm's rate of fire, concealability, magazine capacity, or destructive capacity; or (II) Reasonably designed or intended to increase the firearm's stability and handling when the firearm is repeatedly fired; and (f) Any machine or device that is marketed or sold to the public, or reasonably designed or intended to be used to manufacture or produce a firearm or any other firearm industry product as described in this subsection (2). (3) "Unfinished frame or receiver" means any forging, casting printing, extrusion, machined body, or similar article that has reached a stage in manufacture when it may be readily completed, assembled, or converted to be used as the frame or receiver of a functional firearm or that is marketed or sold to the public to become or be used as the frame or receiver of a functional firearm once completed, assembled, or converted.	

		§ 18-12-111.5. Unlawful conduct involving an unserialized firearm, frame, or receiver--exceptions--penalties--authority to serialize a firearm	**(1)(a) A person shall not knowingly possess or transport an unfinished frame or receiver; except that it is not an offense if the unfinished frame or receiver is required by federal law to be imprinted with a serial number and has been imprinted with a serial number by a federal firearms licensee pursuant to federal law or subsection (7) of this section.** (b) This subsection (1) does not apply to a federally licensed firearm importer or federally licensed firearm manufacturer acting within the scope of the importer's or manufacturer's license. **(2)(a) A person shall not knowingly sell, offer to sell, transfer, or purchase an unfinished frame or receiver; except that it is not an offense if the unfinished frame or receiver is required by federal law to be imprinted with a serial number and has been imprinted with a serial number by a federal firearms licensee pursuant to federal law or subsection (7) of this section.** (b) This subsection (2) does not apply to: (I) A sale, offer to sell, transfer, or purchase if the purchaser is a federal firearms licensee; or (II) A temporary transfer to a federal firearms licensee for the purpose of having the firearm or frame or receiver of a firearm imprinted with a serial number pursuant to subsection (7) of this section. **(3)(a) A person shall not knowingly possess, purchase, transport, or receive a firearm or frame or receiver of a firearm that is not imprinted with a serial number by a federal firearms licensee authorized to imprint a serial number on a firearm, frame, or receiver pursuant to federal law or subsection (7) of this section.** (b) This subsection (3) does not apply if: (I) The person possessing, purchasing, transporting, or receiving the firearm or the frame or receiver of a firearm is a federally licensed firearm importer or federally licensed firearm manufacturer; or (II) The firearm involved has been rendered permanently inoperable; is a defaced firearm, as described in section 18-12-103; is an antique firearm, as defined in 18 U.S.C. sec. 921(a)(16); or was manufactured before October 22, 1968. **(4)(a) A person shall not knowingly sell, offer to sell, or transfer a firearm or frame or receiver of a firearm**	
11	**DELAWARE**	§ 1463. Untraceable firearms; class E or D felony	(a) A person is guilty of possessing an untraceable firearm when then person knowingly possesses an untraceable firearm. (b) A person is guilty of manufacturing an untraceable firearm when the person knowingly manufactures, assembles, causes to be manufactured or assembled, sells, or transfers an untraceable firearm. (c) A person is **guilty of manufacturing or distributing a firearm using a 3-dimensional printer when the person does any 1 of the following:** (1) Uses a **3-dimensional printer or similar device to manufacture or produce a firearm, firearm receiver, or major firearm component when not licensed as a manufacturer.** (2) Distributes by any means, including the internet, to a person who is not licensed as a manufacturer, instructions in the form of computer-aided design files or other code or instructions stored and displayed in electronic format as a digital model that may be used to program a 3-dimensional printer to manufacture or produce a firearm, firearm receiver or major component of a firearm. (d) Possession of an untraceable firearm is a class E felony. (e) Manufacturing an untraceable firearm or manufacturing or distributing a firearm using a 3-dimensional printer is a class D felony.	Serial numbers and background checks for component parts, no plastic undetectable guns, no 3D printing of guns, no distribution of 3D printing instructions.
		§ 1459A. Possession of an unfinished firearm frame or receiver with no serial number	(a) No person shall knowingly transport, ship, transfer, or sell an unfinished firearm frame or receiver unless all of the following apply: (1) The person is a federally-licensed gun dealer or manufacturer. (2) The name of the manufacturer and an individual serial number are conspicuously placed on the unfinished firearm frame or receiver in accordance with the procedures for the serialization of a firearm in 18 U.S.C. § 923(i). (3) The person maintains records for the unfinished firearm frame or receiver in accordance with the requirements for maintenance of records in 18 U.S.C. § 923(g). (b) No person shall knowingly possess an unfinished firearm frame or receiver that does not have the name of the manufacturer and individual serial number conspicuously placed on it or on a major component of the firearm into which the unfinished firearm frame or receiver will be housed. (c) Subsection (b) of this section does not apply to a federally-licensed gun manufacturer during the manufacturing process of a firearm frame or receiver. (d) Possession of an unfinished firearm frame or receiver with no serial number is a class D felony.	
		§ 1462. Covert or undetectable firearms; class E or D felony	(a) A person is guilty of possession of a covert or undetectable firearm when the person knowingly possesses a covert or undetectable firearm. (b) A person is guilty of manufacturing a covert or undetectable firearm when the person manufactures, causes to be manufactured, transports, or sells a covert or undetectable firearm. (c) Possession of a covert or undetectable firearm is a class E felony. (d) Manufacturing a covert or undetectable firearm is a class D felony.	

12	**OREGON**	166.210. Definitions	As used in ORS 166.250 to 166.270, 166.291 to 166.295 and 166.410 to 166.470: **(17) "Undetectable firearm"** means a firearm: (a) Constructed or produced, including through a three-dimensional printing process, entirely of nonmetal substances; (b) That, after removal of grips, stocks and magazines, is not as detectable as a security exemplar by a walk-through metal detector calibrated to detect the security exemplar; or (c) That includes a major component that, if subjected to inspection by the types of X-ray machines commonly used at airports, would not generate an image that accurately depicts the shape of the component. **(18)(a) "Unfinished frame or receiver"** means a forging, casting, printing, extrusion, machined body or similar item that: (A) Is designed to or may readily be completed, assembled or otherwise converted to function as a frame or receiver; or (B) Is marketed or sold to the public to be completed, assembled or otherwise converted to function as a frame or receiver. (b) "Unfinished frame or receiver" does not include a component designed and intended for use in an antique firearm.	Prohibits undetectable firearms, including 3D printed guns; requires all firearms, frames, and receivers to be serialized
		166.267. Importation, sale, or possession of unfinished frame or receiver; requirements; violation and penalties	**(1)(a) A person may not knowingly import into this state, offer for sale, sell or transfer an unfinished frame or receiver unless:** (A) The person is licensed as a firearm dealer under 18 U.S.C. 923; (B) The name of the manufacturer and an individual serial number is conspicuously placed on the unfinished frame or receiver in accordance with the procedures for the serialization of a firearm in 18 U.S.C. 923(i) and all regulations under the authority of 18 U.S.C. 923(i), including but not limited to 27 C.F.R. 478.92; and (C) The person maintains records relating to the unfinished frame or receiver in accordance with the procedures for record keeping related to firearms in 18 U.S.C. 923(g) and all regulations issued under the authority of 18 U.S.C. 923(g), including but not limited to 27 C.F.R. 478.121 to 478.134. (b)(A) A violation of paragraph (a) of this subsection is a Class B violation. **(B) Notwithstanding subparagraph (A) of this paragraph, a violation of paragraph (a) of this subsection is a Class A misdemeanor if, at the time of the offense, the person has a prior conviction under this section or ORS 166.265 or 166.266.** (C) Notwithstanding subparagraphs (A) and (B) of this paragraph, **a violation of paragraph (a) of this subsection constitutes a Class B felony if, at the time of the offense, the person has two or more prior convictions under this section or ORS 166.265 or 166.266.** **(2)(a) A person may not knowingly possess an unfinished frame or receiver that is not serialized as provided in subsection (1)(a)(B) of this section, unless:** (A) The person is a federally licensed gun manufacturer; and	
		166.266. Sale or possession of firearm; imprinting of serial number required; exceptions; violations and penalties	**(1) A person may not knowingly possess, offer for sale, sell or transfer a firearm unless the firearm has been imprinted with a serial number by a federally licensed firearm manufacturer, importer or dealer, or a gunsmith with a federal firearms license, in accordance with federal law.** (2) This section does not apply to: (a) Antique firearms; (b) Firearms manufactured prior to October 22, 1968; (c) Firearms rendered permanently inoperable; (d) The sale, offer to sell, or transfer of a firearm to, or possession of a firearm by, a person licensed as a firearm manufacturer, importer or dealer under 18 U.S.C. 923; or (e) A gunsmith taking possession of a firearm for the purpose of imprinting the firearm with a serial number in accordance with federal law. **(3)(a) A violation of subsection (1) of this section constitutes a Class B violation.** **(b) Notwithstanding paragraph (a) of this subsection, a violation of subsection (1) of this section is a Class A misdemeanor if, at the time of the offense, the person has a prior conviction under this section or ORS 166.265 or 166.267.** **(c) Notwithstanding paragraphs (a) and (b) of this subsection, a violation of subsection (1) of this section is a Class B felony if, at the time of the offense, the person has two or more prior convictions under this section or ORS 166.265 or 166.267.** (4) A person convicted of any offense under this section shall forfeit the firearm. (5) As used in this section, "prior conviction" includes a conviction for a violation offense.	

13	**RHODE ISLAND**	§ 11-47-2. Definitions	When used in this chapter, the following words and phrases are construed as follows: **(1) "3D printing process"** means 3D printing or additive manufacturing which is a process of making three (3) dimensional solid objects from a computer file and shall include any of various processes in which material is joined or solidified under computer control to create a three (3) dimensional object, with material being added together including liquid molecules or powder grains... **(6) "Firearm"** includes any machine gun, pistol, rifle, air rifle, air pistol, "blank gun," "BB gun," or other instrument from which steel or metal projectiles are propelled, or that may readily be converted to expel a projectile, except crossbows, recurve, compound, or longbows, and except instruments propelling projectiles that are designed or normally used for a primary purpose other than as a weapon. The frame or receiver of the weapon shall be construed as a firearm under the provisions of this section... **(8) "Ghost gun"** means a firearm, including a frame or receiver, that lacks a unique serial number engraved or cased in metal alloy on the frame or receiver by a licensed manufacturer, maker, or importer under federal law or markings in accordance with 27 C.F.R. § 479.102. It does not include a firearm that has been rendered permanently inoperable, or a firearm that is not required to have a serial number in accordance with the federal Gun Control Act of 1968... **(20) "Undetectable firearm"** means any firearm that: (i) After removal of all parts, other than a major component, is not as detectable by walk-through metal detectors commonly used at airports or other public buildings; or (ii) Any major component of which, if subjected to inspection by the types of detection devices commonly used at airports or other public buildings for security screening, would not generate an image that accurately depicts the shape of the component; or (iii) Is manufactured wholly of plastic, fiberglass, or through a 3D printing process; or (iv) Upon which the frame or receiver lacks a unique serial number engraved or cased into on the frame or receiver	Serial numbers and background checks for component parts, no 3D printing of guns
17	**VERMONT**	§ 4081. Short title	This subchapter shall be known as the "Vermont Ghost Guns Act."	Serial numbers and background checks for all firearms and component parts
		§ 4083. Unlawful conduct involving unserialized firearms, frames, and receivers	(a)(1) A person shall not knowingly possess **an unfinished frame or receiver unless the unfinished frame or receiver** has been imprinted with a serial number by a federal firearms licensee pursuant to federal law or section 4084 of this title. (2) A person shall not knowingly transfer or offer to transfer an **unfinished frame or receiver unless the unfinished frame or receiver** has been imprinted with a serial number by a federal firearms licensee pursuant to federal law or section 4084 of this title. (3) This subsection shall not apply to: (A) a federal firearms licensee acting within the scope of the licensee's license; (B) possession or transfer of an **unfinished frame or receiver** for the purpose of having it imprinted with a serial number pursuant to federal law or section 4084 of this title; or (C) an **unfinished frame or receiver** transferred to or possessed by a law enforcement officer for legitimate law enforcement purposes. (b)(1) A person shall not knowingly possess a firearm or frame or receiver of a firearm that is not imprinted with a serial number by a federal firearms licensee pursuant to federal law or section 4084 of this title. (2) A person shall not knowingly transfer or offer to transfer a firearm or frame or receiver of a firearm that is not imprinted with a serial number by a federal firearms licensee pursuant to federal law or section 4084 of this title. (3) This subsection shall not apply to: (A) a federal firearms licensee acting within the scope of the licensee's license; (B) possession or transfer of a firearm or frame or receiver of a firearm for the purpose of having it imprinted with a serial number pursuant to federal law or section 4084 of this title; (C) an unserialized frame or receiver transferred to or possessed by a law enforcement officer for legitimate law enforcement purposes; (D) an antique firearm as defined in subsection 4017(d) of this title;	
		§ 4082. Definitions	As used in this subchapter:... **(6) "Frame or receiver of a firearm"** means a part of a firearm that, when the complete firearm is assembled, is visible from the exterior and provides housing or a structure designed to hold or integrate one or more fire control components, even if pins or other attachments are required to connect the fire control components. Any part of a firearm imprinted with a serial number is presumed to be a frame or receiver of a firearm unless the Federal Bureau of Alcohol, Tobacco, Firearms and Explosives makes an official determination otherwise or there is other reliable evidence to the contrary. **(7) "Three-dimensional printer"** means a computer-aided manufacturing device capable of producing a three-dimensional object from a three-dimensional digital model through an additive manufacturing process that involves the layering of two-dimensional cross sections formed of a resin or similar material that are fused together to form a three-dimensional object. **(8) "Unfinished frame or receiver"** means any forging, casting, printing, extrusion, machined body, or similar article that has reached a stage in manufacture when it may readily be completed, assembled, or converted to be used as the frame or receiver of a functional firearm or that is marketed or sold to the public to become or be used as the frame or receiver of a functional firearm once completed, assembled, or converted...	

19	**NEVADA**	202.253. Definitions	As used in NRS 202.253 to 202.369, inclusive:...9. **"Unfinished frame or receiver"** means a blank, a casting or a machined body that is intended to be turned into the frame or lower receiver of a firearm with additional machining and which has been formed or machined to the point at which most of the major machining operations have been completed to turn the blank, casting or machined body into a frame or lower receiver of a firearm even if the fire-control cavity area of the blank, casting or machined body is still completely solid and unmachined.	Serial numbers and background checks for component parts
		202.363. Unlawful to possess, purchase, transport or receive unfinished frame or receiver: Exceptions; penalties	1. A person shall not possess, purchase, transport or receive an unfinished frame or receiver unless: (a) The person is a firearms importer or manufacturer; or (b) The unfinished frame or receiver is required by federal law to be imprinted with a serial number issued by a firearms importer or manufacturer and the unfinished frame or receiver has been imprinted with the serial number. 2. A person who violates this section: (a) For the first offense, is guilty of a gross misdemeanor; and (b) For the second or any subsequent offense, is guilty of a category D felony and shall be punished as provided in NRS 193.130.	
		202.3625. Unlawful to sell, offer to sell or transfer unfinished frame or receiver: Exceptions; penalties	**Deemed unconstitutional:** *see* Sisolak v. Polymer80, Inc. **1. A person shall not sell, offer to sell or transfer an unfinished frame or receiver unless:** (a) The person is: (1) A firearms importer or manufacturer; and (2) The recipient of the unfinished frame or receiver is a firearms importer or manufacturer; or (b) The unfinished frame or receiver is required by federal law to be imprinted with a serial number issued by an importer or manufacturer and the unfinished frame or receiver has been imprinted with the serial number. **2. A person who violates this section:** (a) For the first offense, is guilty of a gross misdemeanor; and (b) For the second or any subsequent offense, is guilty of a category D felony and shall be punished as provided in NRS 193.130.	
		202.3645. Exception to prohibition on sale of unfinished frame or receiver or firearm without serial number	Nothing in the provisions of NRS 202.3625 to 202.364, inclusive, of this act shall be deemed to prohibit the sale of an unfinished frame or receiver or firearm that is not imprinted with a serial number to a firearms importer or manufacturer or a licensed dealer before January 1, 2022. As used in this section, "licensed dealer" has the meaning ascribed to it in NRS 202.2546.	

ORGANIZED RETAIL THEFT SURVEY

Jurisdiction	Organized Retail Theft Statute	Number of Persons (Including Defendant)	Minimum Threshold	Statutorily Aggregated Time Period	Intent to Resell	Tiered ORT Thresholds	Recidivist ORT Provisions	Criminalizes Receiving Property from ORT	Notes
Alabama	Ala. Code § 13A-8-3(c)	One or more	$1,000	180 days	Yes	No	No	No	Requires a common plan or scheme the object of which is to steal or transfer the property to another person or business that buys the property with knowledge or reasonable belief that the property is stolen
Arizona	Ariz. Rev. Stat. § 13-1819	One or more	$0	None	Depends on subsection	No	No	No	
California	Cal. Penal Code § 490.4	Depends on subsection	$0	12 months	Depends on subsection	Yes	No	Yes	Provides specific types of evidence that may be considered to determine whether "the defendant acted in concert with another person or persons," including prior conduct
District of Columbia	D.C. Code § 22-3211.01	Two or more	$1,000	90 days	Intent to sell or to return merchandis	No	No	No	Criminalizes acting as an organizer by recruiting, directing, or coercing individuals to commit organized retail theft, as defined.
Florida	Fla. Stat. § 812.015	Depends on subsection	$750	120 days	Depends on subsection	No	Yes	Yes	Wide variety of prohibited conduct, such as distracting retailers and law enforcement, purchasing merchandise in different packaging, and obtaining or using 10 or more items through theft
Georgia	Ga. Code Ann. § 16-8-14.2	Two or more	$25,000	180 days	Yes	No	No	No	
Indiana	Ind. Code § 35-43-4-2.1	Three or more	$0	None	No	No	No	No	Criminalizes agreeing with at least two others to commit theft and performing an overt act in furtherance of the agreement, similar to conspiracy. Bars conviction both under this statute and for attempted theft or conspiracy to commit theft.
Iowa	Iowa Code § 714.2B	Two or more	$0	None	Yes	Yes	Yes	No	Requires that the defendant is a part of a retail theft enterprise and have committed two preceeding property offenses within six months of the instant offense. Similar to Minnesota statute.
Kansas	Kan. Stat. Ann. § 21-5841	Two or more	$5,000	12 months	No	Yes	No	Yes	Similar to New Mexico's statute
Louisiana	La. Stat. Ann. § 14:67.25	One or more	$0	180 days	Yes	Yes	No	No	
Massachusetts	Mass. Gen. Laws 266 § 30D	Three or more	$2,500	180 days	Yes	Yes	No	No	Enhanced penalties for the "leader" of an organized theft enterprise in addition to criminalizaing actions of the members of the enterprise
Minnesota	Minn. Stat. § 609.522	Two or more	$0	None	Intent to sell, advertise, or return	Yes	Yes	No	Requires two preceeding property offenses within the previous six months. Similar to Iowa's statute.
Nevada	Nev. Rev. Stat. § 205.08345	One or more	$3,500	120 days	Intent to sell or to return merchandis	Yes	No	No	
New Hampshire	N.H. Rev. Stat. Ann. § 637:10-C	Two or more	$0	None	Yes	No	Yes	No	Criminalizes conspiring with one or more persons to engage for profit in a scheme or course of conduct of theft, as defined
New Jersey	N.J. Stat. Ann. 2C:20-11.2	Two or more	$0	None	Yes	No	No	No	Statute only provides enhanced fines to the "leader" of an organized retail theft enterprise; statute does not address mere members of the enterprise. Criminalizes conspiring with others as an organizer, supervisor, financier or manager, to engage for profit in a scheme or course of conduct to effectuate the transfer or sale of shoplifted merchandise.
New Mexico	N.M. Stat. Ann. § 30-16-20.1	Two or more	$2,500	1 Year	Depends on subsection	No	No	Yes	Similar to Kansas's statute

North Carolina	N.C. Gen. Stat. § 14-86.6	Depends on subsection	$1,500	90 days	Depends on subsection	Yes	No	Yes	
Oregon	Or. Rev. Stat. § 164.098	Two or more	$5,000	180 days	No	No	No	No	
Pennsylvania	Pa. Cons. Stat. § 3929.3	One or more	$2,500	None	Yes	Yes	No	No	Criminalizes organizing, coordinating, controling, supervising, financing, or managing any of the activities of an "organized retail theft enterprise," as defined
South Carolina	S.C. Code Ann. § 16-13-135	Two or more	$2,000	90 days	Yes	Yes	Yes	Yes	
Tennessee	Tenn. Code Ann. § 39-14-113	Two or more	$1,000	90 days	Intent to sell or to return merchandise	No	No	Yes	Enhanced penalties for those who exercise organizational, supervisory, financial, or management authority over the activity of one or more other persons in furtherance of the crime
Texas	Tx. Penal Code Ann. § 31.16	One or more	$0	None	Yes	Yes	No	Yes	Enhanced penalities for organizers of organized retail theft and facilitators of theft
Virginia	Va. Code Ann. § 18.2-103.1	Two or more	$5,000	90 days	Yes	No	No	No	
Washington	Wash. Rev. Code § 9A.56.350	Depends on subsection	$750	180 days	No	Yes	No	No	Among other things, also criminalizes theft with no less than six accomplices where the person also makes or sends at least one electronic communication seeking participation in the theft

FELONY THEFT THRESHOLD SURVEY

Jurisdiction	Value Thresholds	Current Felony Threshol	Previous Felony Threshol	Last Amendment of Felony Threshold	Theft Threshold Statutes	High-Value Enhancement?	Organized Retail Theft?	Comments
Alabama	Class B Felony: Over $2,500; Class C Felony: $2,500 to $1,500; Class D Felony: $1,499 to $500.01; Class A Misdemeanor: $500 and under	$1,500	N/A	2015: Ala. Code 13a-8-4.1	Ala. Code 13a-8-3 to 13a-8-5	No	Yes Ala. Code 13a-8-3(c)	
Alaska	Class B Felony: $25,000 or more; Class C Felony: $24,999.99 to $750; Class A Misdemeanor: $749.99 to $250; Class B Misdemeanor: Less than $250	$750	$1,000	2017: Alaska Stat. 11.46.130	Alaska Stat. 11.46.120 to 11.46.150	No	No	Alaska Stat. 11.46.130 and 11.46.140 include a recidvist offense looking back five years for specific values if the defendant has two or more prior convictions
Arizona	Class 2 Felony: $25,000 or more; Class 3 Felony: $24,999.99 to $4,000; Class 4 Felony: $3,999.99 to $3,000; Class 5 Felony: $2,999.99 to $2,000; Class 6 Felony: $1,999.99 to $1,000; Class 1 Misdemeanor: Less than	$1,000	$250	2006: Ariz. Rev. Stat. 13-1802	Ariz. Rev. Stat. 13-1802	Yes: Ariz. Rev. Stat. 13-1802(f)	Yes Ariz. Rev. Stat. 13-1819	
Arkansas	Class B Felony: $25,000 or more; Class C Felony: $24,999.99 to $5,000.01; Class D Felony: $5,000 to $1,000.01; Class A Misdemeanor:	$1,000	$500	2011: Ark. Code Ann. 5-36-103	Ark. Code Ann. 5-36-103	No	No	
California	Grand Theft: Over $950; Petty Theft: $950 and under	$950	$400	2013: Cal. Penal Code 487	Cal. Penal Code 484 to 490.4	No	Yes Cal. Penal Code 490.4	Grand Theft is a "wobbler," and can sometimes be a misdemeanor or felony, depending on aggrivating factors.
Colorado	Class 2 Felony: $1,000,000 or more; Class 3 Felony: $999,999.99 to $100,000; Class 4 Felony: $99,999.99 to $20,000; Class 5 Felony: $19,999.99 to $5,000; Class 6 Felony: $4,999.99 to $2,000; Class 1 Misdemeanor: $1,999.99 to $1,000; Class 2 Misdemeanor: $999.99 to	$2,000	$1,000	2013: Colo. Rev. Stat. 18-4-401	Colo. Rev. Stat. 18-4-401	No	No	
Connecticut	Class B Felony: $25,000 or more; Class C Felony: Over $10,000; Class D Felony: Over $2,000; Class A Misdemeanor: Over $1,000; Class B Misdemeanor: Over $500; Class C	$1,000	$500	2009: Conn. Gen. Stat. 53a-125a	Conn. Gen. Stat. 53a-122 to 53a-125b	No	No	
Delaware	Class G Felony: $1,500 or more; Class A Misdemeanor: Less than $1,500	$1,500	$1,000	2009: Del. Code Ann. tit. 11 Sec. 841	Del. Code Ann. tit. 11 Sec. 841	No	No	Del. Code Ann. tit. 11 Sec 841 contains enhancement where the victim is 62 or older, an "adult who is impaired," or a "person with a disability." The classification goes up one level if the enhancement applies.
District of Columbia	Theft 1 (Up to 10 years incarceration): $1,000 or more; Theft 2 (Up to 180 days imprisonment): Any value	$1,000	$250	2009: D.C. Code 22-3212	D.C. Code 22-3212	No	Yes D.C. Code 22-3211	DC Code 22-3212 contains a recidivist clause for 2 or more prior convictions of theft, resulting in enhanced penalties.
Florida	First Degree Felony: $100,000 or more; Second Degree Felony: $99,999.99 to $20,000; Third Degree Felony: $19,999.99 to $750; First Degree Misdemeanor: $749.99 to	$750	$300	2019: Fla. Stat. 812.014	Fla. Stat. 812.014	No	Yes Fla. Stat. 812.015	Fla. Stat. 812.014 upgrades second and third Petit Thefts to felonies.
Georgia	Up to 20 Years: $25,000 or more; Up to 10 Years: $24,999.99 to $5,000; Up to 5 Years: $4,999.99 to $1,500.01; Up to 1 Year: $1,500 and	$1,500	$500	2012: Ga. Code Ann. 16-8-12	Ga. Code Ann. 16-8-12	No	Yes Ga. Code Ann. 16-8-14.2	Ga. Code Ann. 16-8-12 contains a recidvist subsection for a third or subsequent offense within 5 years.
Hawaii	Class B Felony: Over $20,000; Class C Felony: Over $750; Misdemeanor: Over $250; Petty Misdemeanor: Any	$750	$300	2016: HRS 708-831	HRS 708-830.5 to 708-833	No	No	
Idaho	Grand Theft: Over $1,000; Petit Theft: $1,000 and under	$1,000	$300	1998: Idaho Code 18-2407	Idaho Code 18-2407	No	No	
Illinois	Class X Felony: Over $1,000,000; Class 1 (Non-Probationable) Felony: $1,000,000 to $500,000.01; Class 1 Felony: $500,000 to $10,000.01; Class 2 Felony: $100,000 to $10,000.01; Class 3 Felony: $10,000 to $500.01; Class A Misdemeanor:	$500	$300	2010: Ill. Comp. Stat. 5/16-1	Ill. Comp. Stat. 5/16-1	No	No	Under Ill. Comp. Stat. 5/16-1, a second or subsequent misdemeanor theft (under $500) offense is a Class 4 felony.
Indiana	Level 5 Felony: $50,000 or more; Level 6 Felony: $49,999.99 to $750; Class A Misdemeanor: Less than $750	$750	Any Amount	2013: Ind. Code 35-43-4-2	Ind. Code 35-43-4-2	No	Yes Ind. Code 35-43-4-2.1	
Iowa	Class C Felony: Over $10,000; Class D Felony: $10,000 to $1,500.01;	$1,500	$1,000	2019: Iowa Code 714.2	Iowa Code 714.2	No	Yes Iowa Code 714.2B	Iowa Code 714.2A upgrades the classification of offense if the offense

Kansas	Level 5 Felony: $100,000 or more; Level 7 Felony: $999,999.99 to $25,000; Level 9 Felony: $24,999.99 to $1,500; Class A Misdemeanor: Less than $1,500	$1,500	$1,000	2016: Kan. Stat. Ann. 21-5801	Kan. Stat. Ann. 21-5801	No	Yes Kan. Stat. Ann. 21-5841	Kan. Stat. Ann. 21-5801 provides that theft valued at between $1,499.99 to $50 is a level 9 felony if the person has two previous theft convictions within the last 5 years.
Kentucky	Class B Felony: $1,000,000 or more; Class C Felony: $999,999.99 to	$1,000	$500	2021: Ky. Rev. Stat. Ann. 514.030	Ky. Rev. Stat. Ann. 514.030	Yes: Ky. Rev. Stat. Ann.	No	
Louisiana	Up to 20 Years: $25,000 or more; Up to 10 Years: $24,999.99 to $5,000; Up to 5 Years: $4,999.99 to $1,000; Up to 6 Months: Less than $1,000	$1,000	$750	2017: La. Stat. Ann. 14:67	La. Stat. Ann. 14:67	No	Yes La. Stat. Ann. 14:67.25	La. Stat. Ann. 14:67 provides that a person who commits theft and was previously convicted for theft two or more times shall be subject to up to two years imprisonment.
Maine	Class B Crime: Over $10,000; Class C Crime: $10,000 to $1,000.01; Class D Crime: $1,000 to $500.01; Class E Crime: $500 and under	$1,000	???	Unknown - May be 1975 or prior	Me. Stat. 17-A Sec. 353	No	No	Me. Stat. 17-A Sec. 353 provides that a person who commits theft with two prior theft convictions is guilty of a felony.
Maryland	Up to 20 years: Over $25,000; Up to 10 Years: $999,999.99 to $25,000; Up to 5 Years: $24,999.99 to $1,500; Up to 1 Year: $1,499.99 to $100; Up to	$1,500	$1,000	2016: Md. Code Ann., Crim. Law 7-104	Md. Code Ann. Crim Law 7-104	No	No	
Massachusetts	Up to 5 Years: Over $1,200; Up to 1 Year: $1,200 and under	$1,200	$250	2018: Mass. Gen. Laws 266 Sec. 30	Mass. Gen. Laws 266 Sec. 30	No	Yes Mass. Gen. Laws 266 Sec. 30D	Mass. Gen. Laws Chapter 266 includes multiple age-related enhancements and a recidivist enhancment for a second or subsequent larceny against persons 65 or older.
Michigan	Up to 10 Years: $20,000 or more; Up to 5 Years: $19,999.99 to $1,000; Up to 1 Year: $999.99 to $200; Up to 93 Days: Less than $200	$1,000	???	Unknown - Prior to 1998	Mich. Comp. Laws 750.356	No	No	Mich. Comp. Laws 750.356 escalates a second, third, or subsequent offense in punishment, depending on the instant offense.
Minnesota	Up to 20 Years: Over $35,000; Up to 10 Years: Over $5,000; Up to 5 Years: $5,000 to $1,000.01; Up to 364 Days: $1,000 to $500.01; Up to 90 Days: $500 or less	$1,000	$500	2007: Minn. Stat. 609.52	Minn. Stat. 609.52	No	Yes Minn. Stat. 609.522	Pursuant to Minn. Stat. 609.52, misdemeanor theft for goods or services valued between $1,000 and $500 becomes felony theft if the person has one prior theft conviction.
Mississippi	Up to 20 Years: $25,000 or more; Up to 10 Years: $24,999.99 to $5,000; Up to 5 Years: $4,999.99 to $1,000; Up to 6 Months: Less than $1,000	$1,000	$500	2014: Miss. Code Ann. 97-17-43	Miss. Code Ann. 97-17-43 and 97-17-41	No	No	
Missouri	Class C Felony: $25,000 or more; Class D Felony: $750 or more; Class A Misdemeanor: $749.99 to $150; Class D Misdemeanor: Under $150	$750	$500	2014: Mo. Laws 570.030	Mo. Laws 570.030	No	No	
Montana	Up to 10 Years: Over $5,000; Up to 3 Years: $5,000 to $1,500; Up to $500 Fine: Under $1,500	$1,500	$1,000	2009: Mont. Code Ann. 45-6-301	Mont. Code Ann. 45-6-301	No	No	Under Mont. Code Ann. 45-6-301, misdemeanors may have different subclassifications depending on the amount taken and the defendant's prior convictions.
Nebraska	Class IIA Felony: $5,000 or more; Class IV Felony: $4,999.99 to $1,500; Class I Misdemeanor: $1,499.99 to $500.01; Class II Misdemeanor: $500 or less	$1,500	$500	2015: Neb. Rev. Stat. 28-518	Neb. Rev. Stat. 28-518	No	No	Neb. Rev. Stat. 28-518 provides sentencing enhancements for a second or subsequent theft conviction with a 10 year look-back period.
Nevada	Category B Felony: $25,000 or more; Category C Felony: $24,999.99 to $5,000; Category D Felony: $4,999.99 to $1,200; Misdemeanor: Less than	$1,200	$650	2019: Nev. Rev. Stat. 205.0835	Nev. Rev. Stat. 205.0835	Yes: Nev. Rev. Stat. 205.0835	Yes Nev. Rev. Stat. 205.08345	
New Hampshire	Class A Felony: Over $1,500; Class B	$1,000	$500	2010: N.H. Rev. Stat.	N.H. Rev. Stat. Ann.	No	Yes	
New Jersey	Crime of the Second Degree: $75,000 or more; Crime of the Third Degree: $74,999.99 to $500; Crim of the Fourth Degree $500 to $200; Disorderly Persons Offense: Less than	$200	???	Unknown - Prior to 1993	N.J. Stat. Ann. 2C:20-2	No	Yes N.J. Stat. Ann. 2C:20-11.2	
New Mexico	Second Degree Felony: Over $20,000; Third Degree Felony: $20,000 to	$500	$250	2006: N.M. Stat. Ann. 30-16-1	N.M. Stat. Ann. 30-16-1	No	Yes N.M. Stat. Ann. 30-16-	
New York	Class B Felony: Over $1,000,000; Class C Felony: over $50,000; Class D Felony: Over $3,000; Class E Felony: Over $1,000; Petit Larceny: Any value	$1,000	???	Unknown - Prior to 1987	N.Y. Penal Law 155.25 to 155.42	No	No	
North Carolina	Class H Felony: Over $1,000; Class 1 Misdemeanor: $1,000 and under	$1,000	$400	1991: N.C. Gen. Stat. 14-72	N.C. Gen Stat. 14-72	No	Yes N.C. Gen. Stat. 14-86.6	N.C. Gen. Stat. 14-72 escalates larceny to a felony where the defendant has four prior larceny offenses.

North Dakota	Class A Felony: Over $50,000; Class B Felony: $50,000 to $10,000.01; Class C Felony: Over $1,000; Class A Misdemeanor: $1,000 to $500.01; Class B Misdemeanor: $500 and	$1,000	$500	2013: N.D. Cent. Code 12.1-23-05	N.D. Cent. Code 12.1-23-05	No	No	N.D. Cent Code 12.1-23-05 provides escalating penalties for shoplifting for 1) a second or third conviction, or 2) a fourth conviction
Ohio	Felony of the First Degree: $1,500,000 or more; Felony of the Second Degree $1,499,999.99 to $75,000; Felony of the Third Degree; $150,000 to $74,999.99; Felony of the Fourth Degree: $149,999.99 to $7,500; Felony of the Fifth Degree: $7,499.99 to $1,000; Misdemeanor	$1,000	$500	2011: Ohio Rev. Code Ann. 2913.02	Ohio Rev. Code Ann. 2913.02	No	No	Ohio Rev. Code Ann. 2913.02 provides escalating penalties for theft from protected persons.
Oklahoma	Up to 5 Years: $1,000 or more; Up to 1 Year: Less than $1,000	$1,000	$500	2016: Okla. Stat. Ann. tit. 21 Sec. 1705	Okla Stat. Ann. tit. Sec. 1705	No	No	
Oregon	Class B Felony: $10,000 or more; Class C Felony: $1,000 or more; Class A Misdemeanor $999.99 to $100; Class C Misdemeanor: Less than $100	$1,000	$750	2009: Or. Rev. Stat. 164.045	Or. Rev. Stat. 164.057 to 164.043	No	Yes Or. Rev. Stat. 164.098	
Pennsylvania	Felony of the First Degree: $500,000 or more; Felony of the Second Degree: $499,999.99 to $100,000; Felony of the Third Degree: Over $2,000; Misdemeanor of the First Degree: $2,000 to $200; Misdemeanor of the Second Degree $199.99 to $50; Misdemeanor of the	$2,000	???	Unknown - Prior to 1990	Pa. Const. Stat. 3903	No	Yes Pa. Const. Stat. 3929.3	
Rhode Island	Up to 10 Years: Over $10,000; Up to 6 Years: $9,999.99 to $5,000.01; Up to 3 Years: $4,999.99 to $1,500.01; Up to 1 Year: $1,500 and under	$1,500	$500	2012: R.I. Gen. Laws 11-41-5	R.I. Gen. Laws 11-41-5	No	No	R.I. Gen. Laws 11-41-24 provides penalties for habitual larceny offenders.
South Carolina	Up to 10 Years: $10,000 or more; Up to 5 Years: $9,999.99 to $2,000.01; Misdemeanor: Under $2,000	$2,000	$1,000	2010: S.C. Code Ann. 16-13-30	S.C. Code Ann. 16-13-30	No	Yes S.C. Code Ann. 16-13-135	
South Dakota	Class 2 Felony: Over $500,000; Class 3 Felony: $500,000 to $100,000.01; Class 4 Felony: $100,000 to $5,000.01; Class 5 Felony: $5,000 to $2,500.01; Class 6 Felony: $2,500 to $1,000.01; Class 1 Misdemeanor: $1,000 to $400; Class 2	$1,000	$500	2005: S.D. Codified Laws 22-30A-17	S.D. Codified Laws 22-30A-17	No	No	
Tennessee	Class A Felony: $250,000 or more; Class B Felony: $249,999.99 to $60,000; Class C Felony: $59,999.99 to $10,000; Class D Felony: $9,999.99 to $2,500; Class E Felony: $2,499.99 to $1,000; Class A Misdemeanor:	$1,000	$500	2016: Tenn. Code Ann. 39-14-105	Tenn. Code Ann. 39-14-105	No	Yes Tenn. Code Ann. 39-14-113	
Texas	Felony of the First Degree: $300,000 or more; Felony of the Second Degree: $299,999.99 to $150,000; Felony of the Third Degree: $149,999.99 to $30,000; State Jail Felony: $29,999.99 to $2,500; Class A Misdemeanor: $2,499.99 to $750; Class B Misdemeanor: $749.99 to	$2,500	$1,500	2015: Tex. Penal Code Ann. 31.03	Tex. Penal Code Ann. 31.03	No	Yes Tex. Penal Code Ann. 31.16	Tex. Penal Code Ann. 31.03 escalates penalties one classification if the victim is in a protected class.
Utah	Second Degree Felony: $5,000 or more; Third Degree Felony: $4,999.99 to $1,500; Class A Misdemeanor: $1,499.99 to $500; Class B Misdemeanor: Less than $500	$1,500	???	Unknown - Utah Code Ann. 76-6-404 appears to have reclassified grades of theft. The only prior amendment to the statute was in 1973.	Utah Code Ann. 76-6-404	No	No	Utah Code Ann. 76-6-404 escalates penalties for persons with previous theft convictions looking back 10 years. Utah Code Ann. 76-6-410.5 codifies Theft of a Rental Vehicle.
Vermont	Up to 10 Years: Over $900; Up to 1 Year: $900 or less	$900	$500	2006: Vt. Stat. Ann. tit. 13 Sec. 2502	Vt. Stat. Ann. tit. 13 Sec. 2501 and 2502	No	No	
Virginia	Between 20 Years and 1 Year: $1,000 or more; Class 1 Misdemeanor: Less than $1,000	$1,000	$500	2020: Va. Code Ann. 18.2 95	Va. Code Ann. 18.2-95 and 18.2-96	No	Yes Va. Code Ann. 18.2-103.1	
Washington	Class B Felony: Over $5,000; Class C Felony: $5,000 to $750.01; Gross Misdemeanor: Less than $750	$750	$250	2009: Wash. Rev. Code 9A.56.050	Wash. Rev. Code 9A.56.030 to 9A.56.050	No	Yes Wash. Rev. Code 9A.56.350	
West Virginia	Up to 10 Years: $1,000 or more; Up to 1 Year: Less than $1,000	$1,000	N/A	1994: W. Va. Code 61-3-13	W. Va. Code 61-3-13	No	No	
Wisconsin	Class F Felony: Over $100,000; Class G Felony: $100,000 to $10,000.01;	$2,500	???	Unknown - Legislative history for Wis. Stat.	Wis. Stat. 943.20	No	No	
Wyoming	Up to 10 Years: $1,000 or more; Upt to 6 Months: Less than $1,000	$1,000	$500	2004: Wyo. Stat. Ann. 6-3-402	Wyo. Stat. Ann. 6-3-402	No	No	Wyo. Stat. Ann. 6-3-402 provides escalating penalties for a fifth or subsequent offense looking back 10 years.
Territories								

Guam	Felony of the Second Degree: Over $1,500; Felony of the Third Degree: $1,499.99 to $500.01; Misdemeanor: Over $50; Petty Misdemeanor: $50 or	$500	N/A	Unknown - 1978 or prior	9 Guam Code Ann. 43.20	No	No	
Puerto Rico	Third Degree Felony: Over $1,000; Fourth Degree Felony: $999.99 to $500.01; Misdemeanor: Under $500	$500	N/A	Unknown - Either 2004 or 2011	P.R. Laws Ann. tit. 33 Sec.	No	No	

Survey of Pending Possession Charges

Circuit	DRUG	AMOUNT
1ST CIRCUIT (WONG)	Cocaine	1.0474 grams
only included stats if single or	Cocaine	1.5398 grams
highest charge	Cocaine	.3184 grams
	Meth	1.1388 grams
	Meth	.0226 grams
	Meth	.4208 grams
1st CIRCUIT (SOMERVILLE)	Meth	.0723 grams
	Cocaine & Meth	.0106 grams & .2444 grams
	*Cocaine	.499 grams
	Fentanyl	< 1 mililiter
	*Meth	.0036 grams
	Meth	1.1732 grams
	*Meth	.100 ounce
	Meth	.1521 grams
	Meth	.0036 grams
	Meth	.0036 grams
	Meth	.001 gram
	Cocaine	.0036 grams
	*Meth	.4209 grams
	Meth	.3561 grams (pipe) & .319 grams (baggie)
	Meth	.6295 grams
	Meth	.0036 grams
	Cocaine	.001 ounce
	Meth	.0036 grams
	*Meth	.0036 grams
1ST CIRCUIT (KAWASHIMA)	Cocaine	0.230 grams
	Meth	unknown
	Meth	0.5132 grams
	Heroin	0.01 grams
	*Amph/Meth	0.001 gram
	Amph/Meth	1.000 grams
	Amph/Meth	0.001 gram
	*Meth	0.3086 grams
	*Meth	0.103 grams
	*Meth	0.021 grams
	*Amph/Meth	0.010 grams
	Cocaine	0.010 grams
	*Meth	0.6339 grams
	Meth	1 gram? 1x1 inch bag
	Amph/Meth	0.010 ounces
	*Meth	unknown

Survey of Pending Possession Charges

	Meth	0.6811 grams
	*Amph/Meth	0.100 grams
	*Amph/Meth	1 gram
	*Amph/Meth	1 gram
	*Amph/Meth	.01 grams
1ST CIRCUIT (MALINAO)	Meth	0.3844 grams
(some cases had other charges	Meth	0.1694 grams
but that info not given)	Meth	0.0287 grams
	Meth	0.0533 grams
	Fentanyl (coD)	0.1647 grams
	Fentanyl (coD)	0.2628 grams
	Cocaine	0.6069 grams
	Cocaine	0.7 grams
	Meth	0.041 grams
	Heroin	0.066 grams
	Cocaine	0.0880 grams
	Cocaine	0.0455 grams
	Meth	0.1320 grams
	Fentanyl	0.3890 grams
1ST CIRCUIT (MORIKAWA)	*unknown	indictment
	*Meth	0.0249 grams
	Meth	1.5 grams
	Meth	0.4056 grams
	*Meth	indictment
	Heroin	< 1 ml
	*Meth	0.5589 grams
	Meth	0.1568 grams
	Meth	0.1078 grams
1ST CIRCUIT (REMEGIO)	Meth	0.001 (estimated)
	Meth	0.0036 - 0.2585 grams
	Meth	0.0036 grams
	Meth	0.0036 grams
	Meth	0.0036 grams
	Cocaine	0.0036 grams
	Meth	0.0036 grams
	Meth	0.010 (estimated)
	Meth	0.010 grams (estimated)
	Meth	0.010 grams (estimated)
	Meth	0.010 grams (estimated)
	Meth	0.010 grams (estimated)
	Meth	0.010 grams (estimated)
	Meth	0.010 grams (estimated)
	Meth	0.020 grams (estimated)

Survey of Pending Possession Charges

	Meth	0.0319 grams
	Meth	0.0356 grams
	Meth	0.052 grams
	Meth	0.0962 grams
	Meth	0.100 grams (estimated)
	Meth	0.316 grams
	Meth	0.3866 grams
	Meth	0.500 grams (estimated)
	Meth	0.6579 grams
	Meth	0.8121 grams
	Meth	1.000 (estimated)
	Meth	1.000 grams (estimated)
	Meth	1.000 grams (estimated)
	Count 1: Meth Count 2: Cocaine	Count 1: 0.010 grams (estimated) Count 2: 0.010 grams (estimated)
	Meth	Not enough to estimate
2ND CIRCUIT (KAWANO)	*Meth	.25 grams
	*Meth	1.38 grams
	Meth	.03 grams
	Meth	1.5 grams
	*Meth	1.18 grams
3RD CIRCUIT (KUBOTA)	**2023 stats	Hilo new cases 156, Kona new cases 95
	**2024 stats	Hilo new cases 147, Kona new cases 73
3RD CIRCUIT (DEWEESE)	no cases go to trial	amend bail, get SAA, do treatment, NPQ
		plead out/amend to prom intox comp
	charged via indictment or prelim - so hard to get current stats	
	most common	meth & cocaine with meth the most
	amount	1.5 g most charged but **majority of cases under 1 g**
5TH CIRCUIT	**per R.Ross	Prosecutor's office= if can't see drug, then do not send the drug for testing & do not charge = **residue is not charged**

SURVEY OF NARCOTICS POSSESSION LAWS

State	Law	Definition	Severity	Notes
Alaska	Alaska Stat. §§ 11.71.050(a)(4): Misconduct involving a controlled substance in the Fifth Degree	"a person commits the crime of misconduct involving a controlled substance in the fourth degree if the person…under circumstances not proscribed under AS 11.71.030(a)(3), 11.71.040(a)(3), or 11.71.040(a)(4) possesses any amount of a schedule IA, IIA, IIIA, IVA, or VA controlled substance."	Class A misdemeanor: D may be sentenced to a definite term of imprisonment of not more than one year	Adopted Federal Control Substance Act. Punishes possession based on Schedule. Amount does not matter. There are enhancements for possession of controlled substance within 500 ft of a school ground or youth recreation center. - Meth, Cocaine = Schedule IIA Drug; Fentanyl, Heroin = Schedule IA
California	California Health and Safety Code, Division 10. Uniform Controlled Substances Act 11000 - 11651 Chapter 6, Article 1, Section 11377	(a) Except as authorized by law and as otherwise provided in subdivision (b) or Section 11375, or in Article 7 (commencing with Section 4211) of Chapter 9 of Division 2 of the Business and Professions Code, every person who possesses any controlled substance which is (1) classified in Schedule III, IV, or V, and which is not a narcotic drug, (2) specified in subdivision (d) of Section 11054, except paragraphs (13), (14), (15), and (20) of subdivision (d), (3) specified in paragraph (11) of subdivision (c) of Section 11056, (4) specified in paragraph (2) or (3) of subdivision (f) of Section 11054, or (5) specified in subdivision (d), (e), or (f) of Section 11055, unless upon the prescription of a physician, dentist, podiatrist, or veterinarian, licensed to practice in this state, shall be punished by imprisonment in a county jail for a period of not more than one year, except that such person may instead be punished pursuant to subdivision (h) of Section 1170 of the Penal Code if that person has one or more prior convictions for an offense specified in clause (iv) of subparagraph (C) of paragraph	Misdemeanor (up to 1 year imprisonment and/or $1,000 fine). Can be increased to felony if D has multiple convictions.	Adopted Federal Controlled Substances Act. Punishes based on schedule and criminal history Repeat offenders = felony unless D completes a drug assessment program. Methamphetamine = Schedule II controlled substance under California law but falls under HSC Ch. 2, Sec. 11055(d). Accordingly, possession of methamphetamine is punished under Sec. 11377(a)(5). 11055(d) =Stimulants (including methamphetamine)
Colorado	Colorado Revised Statutes Section 18-18-405	(1) Except as authorized by part 1 or 3 of article 280 of title 12, part 2 of article 80 of title 27, section 18-1-711, section 18-18-428(1)(b), or part 2 or 3 of this article 18, it is unlawful for a person knowingly to possess a controlled substance.	Possession of a Schedule I or II substance in 4+ grams = level 4 drug felony Min: 6 months imprisonment Max; one year imprisonment Fines: $1,000 - $100,000 See CRS 18-1.3-401.5 Possession of any quanityt of schedule III, IV, or V substance = level 1 drug misdemeanor Up to 180 days imprisonment	Adopted Federal Control Substance Act. Punishes possession based on Schedule + Amount. Increased penalty for large amounts and repeat offenders. . - 4 grams or more of any Schedule I or Schedule II substance is a Class 4 felony (CRS § 18-18-403.5(2)(a)) - Under 4 grams of any Schedule I or Schedule II substance is a misdemeanor, but fourth and subsequent offenses are Class 4 felonies (CRS § 18-18-403.5(2)(c))
Connecticut	Connecticut General Statutes Section 21a-279 (2019)	(a)(1) Any person who possesses or has under such person's control any quantity of any controlled substance, except less than one-half ounce of a cannabis-type substance and except as authorized in this chapter, shall be guilty of a class A misdemeanor.	Class A Misdemeanor: Up to one year imprisonment + fine up to $2,000 See CGS Section 53a-36a	Adopted Federal Control Substances Act. Punishes possession based on schedule. Amount does not matter unless canabis Enhanced sentencing for possession near schools or child care centers. Contains treatment provision: (c) "To the extent that it is possible, medical treatment rather than criminal sanctions shall be afforded individuals who breathe, inhale, sniff or drink the volatile substances described in subdivision (49) of section 21a-240."
Georgia	Georgia Code, Title 16, Ch. 13, Article 2, Section 16-13-30(a)	Except as authorized by this article, it is unlawful for any person to purchase, possess, or have under his control any controlled substance.	Possession of a Schedule I or II Substance + less than one gram = Felony (1-3 years imprisonment). Possession of a Schedule I or II Substance + more than one gram but less than four = Felony (1-8 years imprisonment). Possession of a Schedule I or II Substance + between four and 28 grams = Felony (1-15 years imprisonment). See Georgia Code, Section 16-13-30(c)	Adopted Controlled Substances Act. Punishes possession depending on Schedule and weight. Enhancements for repeat offenders.
Louisiana	Louisiana Revised Statutes Section 40:967	It is unlawful for any person knowingly or intentionally to possess a controlled dangerous substance as classified in Schedule II unless such substance was obtained directly or pursuant to a valid prescription or order from a practitioner, as provided in R.S. 40:978 while acting in the course of his professional practice, or except as otherwise authorized by this Part.	(1) An aggregate weight of less than two grams, shall be imprisoned, with or without hard labor, for not more than two years and, in addition, may be sentenced to pay a fine of not more than five thousand dollars. (2) An aggregate weight of two grams or more but less than twenty-eight grams shall be imprisoned, with or without hard labor, for not less than one year nor more than five years and, in addition, may be sentenced to pay a fine of not more than five thousand dollars.	Punishes possession based on Schedule + amount. Meth = schedule II.

Maryland	Maryland Statutes Criminal Law, Title 5, Subtitle 6, Part I, Section 5-601	Except as otherwise provided in this title, a person may not...possess or administer to another a controlled dangerous substance…	Misdemeanor. - First conviction = up to one year imprisonment and/or up to $5,000 fine - Second or third conviction = up to 18 months imprisonment and/or up to $5,000 fine - Fourth or subsequent conviction = up to 2 years and/or up to $5,000 fine	Adopted Controlled Substances Act. Punishes possession based on Schedule. Amount does not matter unless it is in large enough quantity to infer intent to distribute. Exceptions for cannabis.
Massachusetts	Massachusetts General Laws Part I, Title XV, Chapter 94C, Section 34	No person knowingly or intentionally shall possess a controlled substance unless such substance was obtained directly, or pursuant to a valid prescription or order, from a practitioner while acting in the course of his professional practice, or except as otherwise authorized by the provisions of this chapter.	Pentalty for possession = Up to one year in jail and/or up to $1,000 fine (unless heroin) Possession of heroin for first offense = imprisonment up to 2 years and/or $2,000 fine Possession of heroin for second and subsequent offense = imprisonment from 2.5-5 years and/or $5,000 fine	Modified Controlled Substances Act. Punishes based on type. Amount does not matter unless large enough to infer intent to distribute. Amount possessed need only be "some perceptible amount." (See Massachusetts Jury Instruction 7.820) Methamphetamine = Class B contolled substance; Fentanyl = Class A controlled substance
Minnesota	Minnesota Statutes Ch. 152, Section 152.021 - 152.025	A person is guilty of controlled substance crime in the fifth degree and upon conviction may be sentenced as provided in subdivision 4 if: (1) the person unlawfully possesses one or more mixtures containing a controlled substance classified in Schedule I, II, III, or IV, except cannabis flower, cannabis products, lower-potency hemp edibles, or hemp-derived consumer products or a residual amount of one or more mixtures of controlled substances contained in drug paraphernalia	If first offense and no prior convictions, possession of Schedule II controlled substance of less than 0.25 grams or one dosage unit = gross misdemeanor (up to one year in prison and/or $3,000 fine) Any other convictions for possession of Schedule II (including repeat convictions) = felony (up to five years or $10,000	Adopted Controlled Substances Act. Punishes possession based on Schedule and amount. Split into degrees depending on the type of drug and amount. Enhancements for drug offenses that involve firearms or occur near schools. Lowest degree (Fifth Degree) is simple possession in any amount. If first offense and no prior convictions, possession of Schedule II controlled substance of less than 0.25 grams or one dosage unit = gross misdemeanor (up to one year in prison and/or $3,000 fine)
Mississippi	Mississippi Code Title 41, Section 41-29-139(c)	Except as otherwise provided under subsection (i) of this section for actions that are lawful under the Mississippi Medical Cannabis Act and in compliance with rules and regulations adopted thereunder, it is unlawful for any person knowingly or intentionally to possess any controlled substance unless the substance was obtained directly from, or pursuant to, a valid prescription or order of a practitioner while acting in the course of his professional practice, or except as otherwise authorized by this article.	Schedule I-II controlled substances: (A) If less than one-tenth (0.1) gram or two (2) dosage units, the violation is a misdemeanor and punishable by imprisonment for not more than one (1) year or a fine of not more than One Thousand Dollars ($1,000.00), or both. (B) If one-tenth (0.1) gram or more or two (2) or more dosage units, but less than two (2) grams or ten (10) dosage units, by imprisonment for not more than three (3) years or a fine of not more than Fifty Thousand Dollars ($50,000.00), or both. Schedule III-V Controlled substances: (A) If less than fifty (50) grams or less than one hundred (100) dosage units, the offense is a misdemeanor and punishable by not more than one (1) year or a fine of not more than One Thousand Dollars ($1,000.00), or both. (B) If fifty (50) or more grams or one hundred (100) or more dosage units, but less than one hundred fifty (150) grams or five hundred (500) dosage units, by imprisonment for not less than one (1) year nor more than four (4) years or a fine of not more than Ten Thousand Dollars ($10,000.00), or both.	Adopted Controlled Substances Act. Punishes possession based on Schedule and amount. Schedule 1 = Fentanyl carbamate, fentanyl-related substances, fluoroisobutyryl fentanyl, fluoro ortho-fluorofentanyl, furanyl fentanyl; Schedule 2 = methamphetamine, fentanyl, carfentanil
Nebraska	Nebraska Revised Statutes, Ch. 28, Section 28-416(3)	A person knowingly or intentionally possessing a controlled substance, except marijuana or any substance containing a quantifiable amount of the substances, chemicals, or compounds described, defined, or delineated in subdivision (c)(27) of Schedule I of section 28-405, unless such substance was obtained directly or pursuant to a medical order issued by a practitioner authorized to prescribe while acting in the course of his or her professional practice, or except as otherwise authorized by the act, shall be guilty of a Class IV felony. A person shall not be in violation of this subsection if section 28-472 or 28-1701 applies.	Class IV Felony: Up to two years in prison and/or $10,000 fine	Adopted Controlled Substances Act. Punishes possession based on schedule and amount. Exceptions are for persons who assist in getting medical attention for person suffering drug overdose or person who was witness/victim of SA (drugged).
New Mexico	New Mexico Statutes, Ch. 30, Article 31, Section 30-31-23	It is unlawful for a person intentionally to possess a controlled substance unless the substance was obtained pursuant to a valid prescription or order of a practitioner while acting in the course of professional practice or except as otherwise authorized by the Controlled Substances Act. It is unlawful for a person intentionally to possess a controlled substance analog.	Possession of any amount of Schedule I-IV controlled substance (or their analogs) = misdemeanor (less than one year imprisonment and/or $500-1,000 fine) Possession of phencyclidine, methamphetamine, flunitrazepam, or its isomers or salts = Fourth Degree Felony (up to 18 months in prison and up to $5,000 fine).	Adopted Controlled Substances Act. Punishes possession based on schedule. Amount does not matter. Enhancements for possession near school zones. Possession of cannabinoids is punished by amount.
North Dakota	North Dakota Century Code Title 19, § 19-03.1-23.	It is unlawful for any person to willfully, as defined in section 12.1-02-02, possess a controlled substance or a controlled substance analog unless the substance was obtained directly from, or pursuant to, a valid prescription or order of a practitioner while acting in the course of the practitioner's professional practice, or except as otherwise authorized by this chapter, but any person who violates section 12-46-24 or 12-47-21 may not be prosecuted under this subsection.	A person who violates this subsection regarding possession of five or fewer capsules, pills, or tablets of a schedule II, III, IV, or V controlled substance or controlled substance analog is guilty of a class A misdemeanor. First offense = class A misdemeanor (up to one year in prison and/or $3,000 fine) Subsequent offenses = Class C Felony (up to 5 years in prison and/or $10,000 fine)	Adopted Controlled Substances Act. Punishes possession based on Schedule and amount. Even if convicted of felony, "Upon successful completion of a drug court program, mental health court program, or veterans treatment docket, a person who has been convicted of a felony under this section and sentenced to drug court, mental health court, or veterans treatment docket is deemed to have been convicted of a misdemeanor." (§ 19-03.1-23(12)

Ohio	Ohio Revised Code, Title 29, Ch. 2925, Section 2925.11	No person shall knowingly obtain, possess, or use a controlled substance or a controlled substance analog.	(1) If the drug involved in the violation is a compound, mixture, preparation, or substance included in schedule I or II, with the exception of marihuana, cocaine, L.S.D., heroin, any fentanyl-related compound, hashish, and any controlled substance analog, whoever violates division (A) of this section is guilty of aggravated possession of drugs. The penalty for the offense shall be determined as follows: (a) Except as otherwise provided in division (C)(1)(b), (c), (d), or (e) of this section, aggravated possession of drugs is a felony of the fifth degree, and division (B) of section 2929.13 of the Revised Code applies in determining whether to impose a prison term on the offender.	Adopted Controlled Substances Act. Punishes possession based on schedule. Amount does not matter unless marijuana. Increased penalty for repeat convictions. Option to seal after 12 months and expunge after 10 years (see ORC Section 2953.32(B)(1)(a)(ii) Felony in the fifth degree = definite term of six, seven, eight, nine, ten, eleven, or twelve months (see ORC Sec. 2929.14(A)(5)
*Oklahoma	63 OK Stat § 2-402v2 (2023)	It shall be unlawful for any person knowingly or intentionally to possess a controlled dangerous substance unless such substance was obtained directly, or pursuant to a valid prescription or order from a practitioner, while acting in the course of his or her professional practice, or except as otherwise authorized by Section 2-101 et seq. of this title.	Any person who violates this section is guilty of a misdemeanor punishable by confinement for not more than one (1) year and by a fine not exceeding One Thousand Dollars ($1,000.00). Any person who violates this section a second time within ten (10) years, upon conviction, shall be guilty of a misdemeanor. The court may, with the consent of the defendant, order the defendant to complete a substance abuse assessment and evaluation and to complete a diversion program for up to one (1) year following the date of conviction in lieu of other punishments. At the discretion of the court, the diversion program may include drug testing as a requirement. If the defendant refuses or fails to complete the assessment and evaluation or diversion program, the court may impose punishment as provided for in paragraph 1 of this subsection. The provisions of this paragraph shall not apply to violations related to the possession of marijuana.	Adopted Controlled Substances Act. Punishes possession based on schedule. Amount does not matter. Any person who violates this section a fourth time within ten (10) years shall, upon conviction, be guilty of a felony punishable by a fine not exceeding Five Thousand Dollars ($5,000.00), imprisonment in the custody of the Department of Corrections for not less than one (1) year nor more than five (5) years, or by both such fine and imprisonment. b.Upon a verdict or plea of guilty or upon a plea of nolo contendere, but before a judgment of guilt of a violation of this paragraph, the court may, without entering a judgment of guilt and with the consent of the defendant, defer further proceedings upon the specific conditions prescribed by the court not to exceed a three-year period. The court may, with the consent of the defendant, order the defendant to complete a substance abuse assessment and evaluation and to complete a diversion program for up to three (3) years. c.Upon successful completion of the court-ordered substance abuse assessment and evaluation and diversion program within the time prescribed, the felony charge shall be changed to a misdemeanor. If the defendant refuses or fails to complete the assessment and evaluation
*Oregon	Oregon Revised Statutes, Vol. 14, Ch. 475, Section 475.894(1); 475.884	475.894 - Unlawful possession of methamphetamin - It is unlawful for any person knowingly or intentionally to possess methamphetamine unless the substance was obtained directly from, or pursuant to, a valid prescription or order of a practitioner while acting in the course of professional practice, or except as otherwise authorized by ORS 475.005 (Definitions for ORS 475.005 to 475.285 and 475.752 to 475.980) to 475.285 (Short title) and 475.752 (Prohibited acts generally) to 475.980 (Affirmative defense to ORS 475.969, 475.971, 475.975 (1) and 475.976 **475.884 - Unlawful possession of cocaine **475.854 - Unlawful possession of heroin	Unlawful possession of methamphetamine is a Class A misdemeanor if the person possesses two grams or more of a mixture or substance containing a detectable amount of methamphetamine. **Class C felony if commerical drug offense or substantial quantity For purposes of this paragraph, the following amounts constitute substantial quantities of the following controlled substances: (A) Five grams or more of a mixture or substance containing a detectable amount of heroin; (B) Five grams or more or 25 or more user units of a mixture or substance containing a detectable amount of fentanyl, or any substituted derivative of fentanyl as defined by the rules of the State Board of Pharmacy; (C) Ten grams or more of a mixture or substance containing a detectable amount of cocaine; (D) Ten grams or more of a mixture or substance containing a detectable amount of methamphetamine, its salts, isomers or salts of its isomers;	Adopted Controlled Substances Act. Punishes possession based on schedule and amount. Oregon appears to be focused more on treatment and rehabilitation, noting that punishing drug possession increases the burden on public defenders and judicial systems. Oregon Ballot measure 110. (has been repealed in 2024 so now misd) - First passed in 2020. Made possession of methamphetamine or fentanyl punishable by up to a $100 ticket, which could be voided if the user got a needs assessment. The treatment portions of Measure 110 are still in effect with HB 4002 *Note: Ch. 70, HB 4002 went into effect April 1, 2024. It is not reflected in the ORS. The statute repealed the Class E violation and made possession of meth + schedule II drugs a misdemeanor. https://www.opb.org/article/2024/09/01/oregon-starts-drug-possession-recriminalization/#:~:text=The%20roll%2Dback%20of%20Ballot%20Measure%20110%20went%20into%20effect%20Sept.&text=15%2C%202023.&text=Oregon%20has%20ended%20its%20experiment,again%20considered%20a%20misdemeanor%20crime.
South Carolina	South Carolina Title 44, Ch. 53, Art. I, Section 44-53-370(c)	(c) It shall be unlawful for any person knowingly or intentionally to possess a controlled substance unless the substance was obtained directly from, or pursuant to a valid prescription or order of, a practitioner while acting in the course of his professional practice, or except as otherwise authorized by this article.	(d)(1) [possession of] a controlled substance classified in Schedule I (B) and (C) which is a narcotic drug or lysergic acid diethylamide (LSD) and in Schedule II which is a narcotic drug is guilty of a misdemeanor and, upon conviction, must be imprisoned not more than two years or fined not more than five thousand dollars, or both. (d)(2) [possession of] (2) any other controlled substance classified in Schedules I through V is guilty of a misdemeanor and, upon conviction, must be imprisoned not more than six months or fined not more than one thousand dollars, or both **Cocaine - (d)(3) [possession of] cocaine is guilty of a misdemeanor and, upon conviction, must be imprisoned not more than three years or fined not more than five thousand dollars, or both. 2nd - 5years &/or $7500 fine, 3+ 10 years &/0r $12,500 fine. **Fentanyl - (d)(4) [possession of] more than two grains of fentanyl or fentanyl-related substance is guilty of a felony and, upon conviction, must be imprisoned not more than five years or fined not more than five thousand dollars, or both. 2nd - 5 years &/0r $5000, 3+ = 15 years &/or $10,000	Adopted Controlled Substances Act. Punishes possession based on schedule. Amount does not matter. Increasing penalty for repeat offenses.

Tennessee	Tennessee Code, Section 39-17-418	It is an offense for a person to knowingly possess or casually exchange a controlled substance, unless the substance was obtained directly from, or pursuant to, a valid prescription or order of a practitioner while acting in the course of professional practice.	Class A misdemeanor: (Up to 11 months imprisonment and/or up to $2,500 fine) - mandatory minimum jail of 30 days	Adopted Controlled Substances Act. Punishes possession based on schedule. Amount does not matter. Statute has built in protections requiring court to strongly consider sentencing D to a drug treatment program instead of prison + gives D credit for time served if D completes a drug treatment program instead. Enhancements for repeat convictions.
Texas	Texas Health and Safety Code, Title 6, Subtitle C, Ch. 481, Subchapter A, Section 481.115	a person commits an offense if the person knowingly or intentionally possesses a controlled substance listed in Penalty Group 1 or 1-B, unless the person obtained the substance directly from or under a valid prescription or order of a practitioner acting in the course of professional practice.	(b) An offense under Subsection (a) is a state jail felony if the amount of the controlled substance possessed is, by aggregate weight, including adulterants or dilutants, less than one gram. (up to two years imprisonment and/or fine of up to $10,000). (c) An offense under Subsection (a) is a felony of the third degree if the amount of the controlled substance possessed is, by aggregate weight, including adulterants or dilutants, one gram or more but less than four grams. (2-10 years imprisonment and/or fine of up to $10,000)	Adopted Controlled Substances Act. Punishes possession based on drug Penalty Group and amount possessed. Methamphetamine, cocaine, and heroin = penalty group 1
Utah	Utah Code, Title 58, Ch. 37, Section 8, 58-37-8(2)(a)(i)	(a)It is unlawful: (i)for a person knowingly and intentionally to possess or use a controlled substance analog or a controlled substance, unless it was obtained under a valid prescription or order, directly from a practitioner while acting in the course of the person's professional practice, or as otherwise authorized by this chapter;	[Possession of] a substance classified in Schedule I or II, or a controlled substance analog, is guilty of a class A misdemeanor on a first or second conviction, and is guilty of a third degree felony if third or subsequent conviction and if each prior offense was committed within seven years before the date of the offense upon which the current conviction is based. (See Section 8, 58-37-8(2)(b)(ii)	Adopted Controlled Substances Act. Punishes possession based on schedule.
Vermont	Vermont Statutes, Title 18, Ch. 84, Subchapter 001, Section 4205 Section 4234: Methamphetamine Section 4231: Cocaine	It shall be unlawful for any person to manufacture, possess, have under his or her control, sell, prescribe, administer, dispense, or compound any regulated drug, except as authorized in this chapter.	(1) A person knowingly and unlawfully possessing methamphetamine shall be imprisoned not more than one year or fined not more than $2,000.00, or both. (2) Meth (2.5+ grams) = up to 5 years imprisonment and/or $100,000 fine. (3) Meth (25+ grams) = up to 10 years imprisonment and/or $250,000 fine. (1) A person knowingly and unlawfully possessing cocaine shall be imprisoned not more than one year or fined not more than $2,000.00, or both. (2) Cocaine (2.5+ grams) = up to 5 years and/or $100,000 fine. (3) Cocaine (1 ounce+) = up to 10 years and/or $250,000 fine.	Adopted Controlled Substances Act. Punishes poossession by drug type and amount possessed. Does not follow federal schedules, but has different statute for each type. 2017 Report on drug possession: https://legislature.vermont.gov/assets/Legislative-Reports/Act-61-Sec.-6-Report-Dec.-15-2017.pdf
Washington	RCW, Title 69, Ch. 69.50, Section 69.50.4013	(1) Except as otherwise authorized by this chapter, it is unlawful for any person to: (a) Knowingly possess a controlled substance unless the substance was obtained directly from, or pursuant to, a valid prescription or order of a practitioner while acting in the course of his or her professional practice	Gross misdemeanor (up to 180 days imprisonment and/or $1,000 fine) Prior convictions = up to 364 days imprisonment	Adopted Controlled Substances Act. Punishes possession by schedule. Amount does not matter.
West Virginia	West Virginia Code, Ch. 60A, Art. 4, Section 60A-4-401(c)	It is unlawful for any person knowingly or intentionally to possess a controlled substance unless the substance was obtained directly from, or pursuant to, a valid prescription or order of a practitioner while acting in the course of his or her professional practice, or except as otherwise authorized by this act.	Misdemeanor (90 days - 6 months and/or fined up to $1,000 fine)	Adopted Controlled Substances Act. Punishes possession by schedule. Amount does not matter.