THE SENATE
THIRTY-THIRD LEGISLATURE, 2026
STATE OF HAWAII

S.B. NO. 2721

JAN 23 2026

A BILL FOR AN ACT

RELATING TO THE ADMINISTRATION OF JUSTICE.

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

PART I

SECTION 1. The legislature finds that Act 245, Sessions Law of Hawaii 2024, requested the judicial council to appoint a committee to review and recommend revisions to the Hawaii Penal Code. In particular, the requested review was 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.

Accordingly, the judicial council convened a penal code review committee comprising sixty-one members, including sixteen judges representing all courts and all four judicial circuits; the chair of the senate committee on judiciary and labor; the chair of the house judiciary and Hawaiian affairs committee; a representative from the department of the attorney general; the director of the department of corrections and rehabilitation; a representative from the department of health; prosecuting attorneys or their representatives for all four counties; the public defender; representatives from Honolulu and Maui police departments; a representative of the office of Hawaiian affairs; a member of the judicial council; representatives of the criminal defense bar; crime victim advocates; and community advocates.

Eight subcommittees were formed, and each subcommittee convened numerous times to consider and prepare proposed revisions to designated parts of the Penal Code and to related statutes outside the Penal Code, for submission to the entire committee. The penal code review committee met in plenary session nine times between November 1, 2024, and October 31, 2025, and recommended statutory changes that are reflected in the legislation proposed by this Act.

The purpose of this Act is to amend various chapters of the Hawaii Penal Code, and related statutes outside the Penal Code, pursuant to the recommendations of the Penal Code review committee.

PART II

SECTION 2. The purpose of this part is to amend chapter 701, Hawaii Revised Statutes, regarding preliminary provisions of the Hawaii Penal Code.

SECTION 3. Section 701-107, Hawaii Revised Statutes, is amended by amending subsection (2) to read as follows:

"(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."

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

"(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."

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

"**§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) [~~The~~] Unless there is any authority to the contrary, the fact [~~must~~] shall be proved by a preponderance of the evidence."

PART III

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

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

"**§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~~] the person's 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~~] the person believed them to be."

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

"(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~~] 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 705-510 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."

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

"**§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~~] the person conspires commits an overt act in pursuance of the conspiracy."

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

"**§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~~] the person conspires to commit a crime has conspired with another person or persons to commit the same crime, [~~he~~] the person is guilty of conspiring to commit the crime with such other person or persons, whether or not [~~he~~] the person knows [~~their~~] the identity[~~.~~] or identities of the other person or persons."

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

"(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."

PART IV

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

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

1. By amending subsection (3) to read:

"(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. 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."

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

"(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. In addition, 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."

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

"**§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, [~~has reason to believe~~] determines, after a hearing if a hearing is requested, 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 examiners

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~~]. [~~One~~] When appointing 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 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) [~~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.~~] If an examination is ordered under subsection (3), the examination and report and the compensation of persons making or assisting in the examination shall be in accordance with section 704-404(3) and (5) to (11).

[~~(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)~~] (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). If, following the receipt of the report[~~,~~] or reports, and after a hearing, if a hearing is requested, 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.

[~~(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.~~"]

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

1. By amending subsection (3) to read:

"(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."

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

"(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. In addition, 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."

PART V

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

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

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

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

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

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

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

[~~(c)~~] (e) One year upon conviction of a misdemeanor; except that upon a conviction under section 586-4, 586-11, [~~or~~] 709-906, or 712- , 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."

PART VI

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

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

"(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."

PART VII

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

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

"**§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) Upon~~]

upon command by a person known to [~~him~~] the person to be a firefighter [~~or~~], law enforcement officer, [~~he intentionally~~]

emergency medical services personnel, or emergency medical technician, 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.~~]"

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

"**§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), 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 this subsection shall not apply if the person is arrested for a new felony offense in the course of the escape or during the pendency of the escape."

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

~~["§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.~~"]

PART VIII

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

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

"**§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."

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

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

(1) 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

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

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

"(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.~~] 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.~~]"

PART IX

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

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

"**§712- 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."

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

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

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

(b) 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~~] Possessing a dangerous drug in the [~~third~~] first degree is a class C felony."

SECTION 31. Section 712-1255, Hawaii Revised Statutes, is amended by amending subsection (1) to read as follows:

"(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, 712-1245, 712-1246, 712-1248, 712-1249, [~~or~~] 712-1250, or 712- , 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 upon terms and conditions. Upon violation of a term or condition, the court may enter an adjudication of guilt and proceed as otherwise provided."

PART X

SECTION 32. The purpose of this part is to amend chapter 804, Hawaii Revised Statutes, regarding bail and bonds.

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

"**§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."

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

"§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; provided that the department may seek reimbursement from the defendant or filing a claim or complaint for lost equipment or damages to the equipment. The department's responsibilities regarding electronic monitoring and surveillance shall be subject to legislative appropriations specifically for this purpose.

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

PART XI

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

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

"SECTION 15. This Act shall take effect on January 1, 2021; provided that sections 2[~~, 3,~~] and 4 shall be repealed on June 30, 2026; provided further that sections 706-623[~~, 709-906~~,] and 853-4, Hawaii Revised Statutes, shall be reenacted in the form in which they read on the day prior to the effective date of this Act."

SECTION 37. Act 23, Session Laws of Hawaii 2023, as amended by Act 178, Session of Hawaii 2024, is amended by amending section 7 to read as follows:

"SECTION 7. This Act shall take effect upon its approval; provided that the amendments made to section 709-906, Hawaii Revised Statutes, by section 4 of this Act shall not be repealed when that section is reenacted on June 30, 2026, pursuant to[~~:~~

~~(1) Section 15 of Act 19, Session Laws of Hawaii 2020; and~~

~~(2)~~ ~~Section~~] section 4 of Act 238, Session Laws of Hawaii 2021."

PART XII

SECTION 38. This Act does not affect rights and duties that matured, penalties that were incurred, and proceedings that were begun before its effective date.

SECTION 39. Statutory material to be repealed is bracketed and stricken. New statutory material is underscored.

SECTION 40. This Act shall take effect on July 1, 2026; provided that:

(1) Part XI shall take effect on June 29, 2026;

(2) The amendments made to section 706-623(1), Hawaii Revised Statutes, by section 17 of this Act shall not be repealed when that section is reenacted on June 30, 2026, pursuant to section 15 of Act 19, Session Laws of Hawaii 2020; and

(3) The amendments made to section 709-906(19), Hawaii Revised Statutes, by section 19 of this Act shall not be repealed when that section is reenacted on June 30, 2026, pursuant to section 4 of Act 238, Session Laws of Hawaii 2021.

INTRODUCED BY: Karl Rhoads

S.B. NO. 2721

Report Title:
Hawaii Penal Code; Committee Recommendations; Implementation

Description:
Implements recommendations pursuant to Act 245, SLH 2024 to amend the Hawaii Penal Code.

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