
A BILL FOR AN ACT

RELATING TO THE ADMINISTRATION OF JUSTICE.

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

1 PART I

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

- 7 (1) That the Hawaii Penal Code is consistent and
8 proportional across the various types and classes of
9 offenses;
- 10 (2) That the Hawaii Penal Code is aligned with national
11 best practices and based upon evidence-based
12 strategies;
- 13 (3) That grades and punishment are appropriate and
14 proportionate to other sentences imposed for criminal
15 or civil offenses and are cost-effective in deterring
16 crime, reducing recidivism, and providing restitution
17 to victims in a manner that provides equal justice and



1 punishment regardless of socioeconomic class or
2 ethnicity;

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

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

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



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

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

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

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



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

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

6 "**§701-116 Proving applicability of the Code.** When the
7 application of the Code depends on the finding of a fact [~~which~~]
8 that is not required to be found beyond a reasonable doubt:

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

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

16 PART III

17 SECTION 6. The purpose of this part is to amend
18 chapter 704, Hawaii Revised Statutes, regarding penal
19 responsibility and fitness to proceed.

20 SECTION 7. Section 704-404, Hawaii Revised Statutes, is
21 amended as follows:



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

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

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



1 "(9) The court shall obtain all existing relevant medical,
2 mental health, social, police, and juvenile records, including
3 those expunged, and other pertinent records in the custody of
4 public agencies, notwithstanding any other statute, and make the
5 records available for inspection by the examiners in hard copy
6 or digital format. The court may order that the records so
7 obtained be made available to the prosecuting attorney and
8 counsel for the defendant in either format, subject to
9 conditions the court determines appropriate; provided that
10 juvenile records shall not be made available unless
11 constitutionally required. [~~No further disclosure of records~~
12 ~~shall be made except as permitted by law.~~] If, pursuant to this
13 section, the court orders the defendant committed to a hospital
14 or other suitable facility under the control of the director of
15 health, then the county police departments shall provide to the
16 director of health and the defendant copies of all police
17 reports from cases filed against the defendant that have been
18 adjudicated by the acceptance of a plea of guilty or no contest,
19 a finding of guilt, acquittal, acquittal pursuant to section
20 704-400, or [by] the entry of plea of guilty or no contest made
21 pursuant to chapter 853; provided that the disclosure to the



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

16 (10) ~~[All]~~ Within fourteen days of receipt of a court
17 order, excluding intermediate Saturdays, Sundays, or holidays
18 designated pursuant to section 8-1, or a longer time as the
19 court may prescribe, all public agencies, persons, or other
20 entities in possession of relevant medical, mental health,
21 social, police, and juvenile records, including those expunged,



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

17 SECTION 8. Section 704-406, Hawaii Revised Statutes, is
18 amended to read as follows:

19 **"§704-406 Effect of finding of unfitness to proceed and**
20 **regained fitness to proceed.** (1) If the court determines that
21 the defendant lacks fitness to proceed, the proceeding against



1 the defendant shall be suspended, except as provided in sections
2 704-407 and 704-421, and the court shall commit the defendant to
3 the custody of the director of health to be placed in an
4 appropriate institution for detention, assessment, care, and
5 treatment; provided that:

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

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

15 If the court is satisfied that the defendant may be released on
16 conditions without danger to the defendant or to another or risk
17 of substantial danger to property of others, the court shall
18 order the defendant's release, which shall continue at the
19 discretion of the court, on conditions the court determines
20 necessary; provided that the release on conditions of a
21 defendant charged with a misdemeanor not involving violence or



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



1 or actual identification of individuals who furnished
2 information in connection with the investigation or who were of
3 investigatory interest. The department of health and the
4 department of corrections and rehabilitation may disclose all
5 relevant records between themselves regarding a defendant moved
6 between departments. No further disclosure of records shall be
7 made except as provided by law.

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

15 (3) The department of health shall periodically report to
16 the court on the defendant's compliance with treatment and
17 fitness restoration. When the court, on its own motion or upon
18 the application of the director of health, the prosecuting
19 attorney, or the defendant, [~~has reason to believe~~] determines,
20 after a hearing if a hearing is requested, that the defendant
21 has regained fitness to proceed, the penal proceeding shall be



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



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



1 ~~good cause shown.]~~ As used in this section, the term "qualified
2 physician" means a physician qualified by the court for the
3 specific evaluation ordered. If, ~~however,~~ after a
4 determination that the defendant has regained fitness, the court
5 is of the view that so much time has elapsed since the
6 commitment or release on conditions of the defendant that it
7 would be unjust to resume the proceeding, the court may dismiss
8 the charge and:

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

19 (4) ~~[An examination for regained fitness to proceed~~
20 ~~performed under this section may employ any method that is~~
21 ~~accepted by the professions of medicine or psychology for the~~



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

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

- 16 ~~(a) A description of the nature of the examination;~~
17 ~~(b) An opinion as to the defendant's capacity to~~
18 ~~understand the proceedings against the defendant and~~
19 ~~to assist in the defendant's own defense; and~~
20 ~~(c) Where more than one examiner is appointed, a statement~~
21 ~~that the opinion rendered was arrived at independently~~



1 ~~of any other examiner, unless there is a showing to~~
2 ~~the court of a clear need for communication between or~~
3 ~~among the examiners for clarification. A description~~
4 ~~of the communication shall be included in the report.~~
5 ~~After all reports are submitted to the court,~~
6 ~~examiners may confer without restriction.~~

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

11 ~~(7)]~~ (5) If a defendant who has either been committed to
12 the custody of the director of health for a limited period
13 pursuant to subsection [1)] (1)(b) or released on conditions
14 for a limited period pursuant to subsection (1) is not found fit
15 to proceed [prior to] before the expiration of the commitment,
16 the charge for which the defendant was committed for a limited
17 period shall be dismissed. Upon dismissal of the charge, the
18 defendant shall be released from custody or discharged from the
19 release on conditions, whichever is applicable, unless the
20 defendant is subject to prosecution for other charges or subject
21 to section 334-60.2 regarding involuntary hospitalization



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

- 18 (a) Release the defendant; or
19 (b) Subject to section 334-60.2 regarding involuntary
20 hospitalization criteria, order the defendant to be
21 committed to the custody of the director of health to



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

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



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

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

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

9 SECTION 9. Section 704-407.5, Hawaii Revised Statutes, is
10 amended as follows:

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

12 "(3) An examination performed under this section may
13 employ any method that is accepted by the professions of
14 medicine or psychology for the examination of those alleged to
15 be affected by a physical or mental disease, disorder, or
16 defect; provided that each examiner shall form and render
17 diagnoses and opinions upon the physical and mental condition of
18 the defendant independently from the other examiners, and the
19 examiners, upon approval of the court, may secure the services
20 of clinical psychologists and other medical or paramedical
21 specialists to assist in the examination and diagnosis. The



1 examination shall comply with the other provisions of this
2 section and may be conducted utilizing telehealth, as that term
3 is defined in section 453-1.3(j), at the request of the
4 examiner. The department of health and the department of
5 corrections and rehabilitation shall provide secure access to
6 defendants in their custody for any examination requested to be
7 conducted utilizing telehealth."

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

9 "(10) The court shall obtain all existing relevant
10 medical, mental health, social, police, and juvenile records,
11 including those expunged, and other pertinent records in the
12 custody of public agencies, notwithstanding any other statute,
13 and make the records available for inspection by the examiners
14 in hard copy or digital format. The court may order that the
15 records so obtained be made available to the prosecuting
16 attorney and counsel for the defendant in either format, subject
17 to conditions the court determines appropriate; provided that
18 juvenile records shall not be made available unless
19 constitutionally required. The department of health and the
20 department of corrections and rehabilitation may disclose all
21 relevant records between themselves regarding a defendant moved



1 between departments. No further disclosure of records shall be
2 made except as permitted by law.

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



1 or federal statute and without requiring a signed consent from
2 the defendant if the order so provides."

3 PART IV

4 SECTION 10. The purpose of this part is to amend
5 chapter 705, Hawaii Revised Statutes, regarding inchoate crimes.

6 SECTION 11. Section 705-501, Hawaii Revised Statutes, is
7 amended to read as follows:

8 **"§705-501 Criminal attempt; attempting to aid another.**

9 (1) A person who engages in conduct intended to aid another to
10 commit a crime is guilty of an attempt to commit the crime,
11 ~~[although]~~ even though the crime is not committed or attempted
12 by the other person, ~~[provided his]~~ if the person's conduct
13 would establish ~~[his]~~ the person's complicity under sections
14 702-222 through 702-226 ~~[if]~~ had the crime ~~[were]~~ been committed
15 or attempted by the other person.

16 (2) It ~~[is]~~ shall not be a defense to a prosecution under
17 this section that, under the circumstances, it was impossible
18 for the defendant to aid the other person in the commission of
19 the offense, ~~[provided he]~~ if the defendant could have done so
20 had the circumstances been as ~~[he]~~ the defendant believed them
21 to be."



1 SECTION 12. Section 705-511, Hawaii Revised Statutes, is
2 amended by amending subsections (1) and (2) to read as follows:

3 "(1) A person shall not be liable under section 705-510
4 for criminal solicitation of another if under sections
5 702-224(1) and (2) and 702-225(1) [~~he~~] the person would not be
6 legally accountable for the conduct of the other person.

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

- 10 (a) [~~He~~] The person is, by definition of the offense,
11 legally incapable in an individual capacity of
12 committing the offense solicited;
- 13 (b) [~~He~~] The person is penally irresponsible or has an
14 immunity to prosecution or conviction for the
15 commission of the crime;
- 16 (c) [~~He~~] The person is unaware of the criminal nature of
17 the conduct in question or of the defendant's criminal
18 intent; or
- 19 (d) [~~He~~] The person does not have the state of mind
20 sufficient for the commission of the offense in
21 question."



1 SECTION 13. Section 705-520, Hawaii Revised Statutes, is
2 amended to read as follows:

3 **"§705-520 Criminal conspiracy.** A person is guilty of
4 criminal conspiracy if, with intent to promote or facilitate the
5 commission of a crime:

- 6 (1) [~~He~~] The person agrees with one or more persons that
7 they or one or more of them will engage in or solicit
8 the conduct or will cause or solicit the result
9 specified by the definition of the offense; and
10 (2) [~~He~~] The person or another person with whom [~~he~~
11 ~~conspired~~] the person conspires commits an overt act
12 in pursuance of the conspiracy."

13 SECTION 14. Section 705-521, Hawaii Revised Statutes, is
14 amended to read as follows:

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



1 ~~[their]~~ the identity[-] or identities of the other person or
2 persons."

3 SECTION 15. Section 705-523, Hawaii Revised Statutes, is
4 amended by amending subsections (1) and (2) to read as follows:

5 "(1) A person shall not be liable under section 705-520
6 for criminal conspiracy if, under sections 702-224(1) and (2)
7 and 702-225(1) ~~[he]~~, the person would not be legally accountable
8 for the conduct of the other person.

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

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

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

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



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

4 PART V

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

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

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

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

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

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



1 (d) Three years upon conviction of any other class C
2 felony;
3 [~~e~~] (e) One year upon conviction of a misdemeanor;
4 [~~except~~] provided that, upon a conviction under
5 section 586-4, 586-11, [~~or~~] 709-906, or 712- , the
6 court may sentence the defendant to a period of
7 probation not exceeding two years; or
8 [~~d~~] (f) Six months upon conviction of a petty
9 misdemeanor; provided that up to one year may be
10 imposed upon a finding of good cause; [~~except~~]
11 provided further that, upon a conviction under
12 section 709-906, the court may sentence the defendant
13 to a period of probation not exceeding one year.
14 The court, on application of a probation officer, on application
15 of the defendant, or on its own motion, may discharge the
16 defendant at any time. [~~Prior to the court~~] Before granting an
17 early discharge, the defendant's probation officer shall [~~be~~
18 ~~required to~~] report to the court [~~concerning~~] regarding the
19 defendant's compliance or [~~non-compliance~~] noncompliance with
20 the conditions of the defendant's probation, and the court shall
21 afford the prosecuting attorney an opportunity to be heard. The



1 terms of probation provided in this part, other than in this
2 section, shall not apply to sentences of probation imposed under
3 section 706-606.3."

4 PART VI

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

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

10 "(19) For the purposes of this section:

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

13 "Family or household member":

14 (a) Means spouses or reciprocal beneficiaries, former
15 spouses or reciprocal beneficiaries, persons in a
16 dating relationship as defined under section 586-1,
17 persons who have a child in common, parents, children,
18 persons related by consanguinity, and persons jointly
19 residing or formerly residing in the same dwelling
20 unit; and



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

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

6 PART VII

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

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

12 "~~§710-1012 [Refusing to assist in fire control.]~~
13 Disobeying an order or regulation relating to the conduct of
14 persons in the vicinity of a fire. (1) A person commits the
15 offense of [~~refusing to assist in fire control~~] disobeying an
16 order or regulation relating to the conduct of persons in the
17 vicinity of a fire when[+]

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



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

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

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

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

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

19 "**§710-1021 Escape in the second degree.** (1) A person
20 commits the offense of escape in the second degree if the person



1 intentionally escapes from a correctional or detention facility
2 or from custody.

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

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

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

14 [~~§710-1011 Refusing to aid a law enforcement officer.~~

15 ~~(1) A person commits the offense of refusing to aid a law~~
16 ~~enforcement officer when, upon a reasonable command by a person~~
17 ~~known to him to be a law enforcement officer, he intentionally~~
18 ~~refuses or fails to aid such law enforcement officer, in:~~

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

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



1 unreasonable noise, if the unreasonable noise persists
2 thereafter."

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

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

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

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

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

18 ~~"(2) [Noise is unreasonable, within the meaning of~~
19 ~~subsection (1)(b), if considering the nature and purpose of the~~
20 ~~person's conduct and the circumstances known to the person,~~
21 ~~including the nature of the location and the time of the day or~~



1 ~~night, the person's conduct involves a gross deviation from the~~
2 ~~standard of conduct that a law-abiding citizen would follow in~~
3 ~~the same situation; or the failure to heed the admonition of a~~
4 ~~police officer that the noise is unreasonable and should be~~
5 ~~stopped or reduced.~~

6 ~~The renter, resident, or owner-occupant of the premises who~~
7 ~~knowingly or negligently consents to unreasonable noise on the~~
8 ~~premises shall be guilty of a noise violation.] Except as~~

9 provided in subsection (3), disorderly conduct is a violation.

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

15 PART IX

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

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



1 "§712- Possessing a dangerous drug in the second
2 degree. (1) A person commits the offense of possessing a
3 dangerous drug in the second degree if the person knowingly
4 possesses any dangerous drug in any amount.
5 (2) Possessing a dangerous drug in the second degree is a
6 misdemeanor.
7 (3) Whenever a court sentences a person, grants a motion
8 for deferral, or grants a conditional discharge, the court shall
9 also require that the person complete a substance abuse
10 assessment. The court may require the person to participate in
11 treatment at an appropriate level, as recommended by the
12 assessment.
13 (4) For a third or any subsequent conviction within five
14 years of a second or subsequent conviction, the sentence shall
15 be six months incarceration as a term and condition of probation
16 with early release to a substance abuse treatment program or up
17 to one year incarceration."

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

20 "§712-1243 [~~Promoting~~] Possessing a dangerous drug in the
21 [~~third~~] first degree. (1) A person commits the offense of



1 ~~[promoting]~~ possessing a dangerous drug in the ~~[third]~~ first
2 degree if the person knowingly possesses ~~[any dangerous drug in~~
3 ~~any amount.]~~ :

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

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

9 (i) 0.5 grams up to 3.53 grams containing
10 methamphetamine, heroin, morphine, cocaine, or
11 fentanyl or any of their respective salts,
12 isomers, and salts of isomers; or

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

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

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

19 "(1) Whenever any person who has not previously been
20 convicted of any offense under this chapter or chapter 329 or
21 under any statute of the United States or of any state relating



1 to a dangerous drug, harmful drug, detrimental drug, or an
2 intoxicating compound, pleads guilty to or is found guilty of
3 promoting or possessing a dangerous drug, harmful drug,
4 detrimental drug, or an intoxicating compound under section
5 712-1243, 712-1245, 712-1246, 712-1248, 712-1249, [~~or~~] 712-1250,
6 or 712-_____, the court, without entering a judgment of guilt and
7 with the consent of the accused, may defer further proceedings
8 and place the accused on probation upon terms and conditions.
9 Upon violation of a term or condition, the court may enter an
10 adjudication of guilt and proceed as otherwise provided."

11 PART X

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

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

16 "**S804-7 Release after bail.** The judiciary, in
17 consultation with the department of corrections and
18 rehabilitation and the department of the attorney general, shall
19 establish, on or before July 1, 2027, and administer a statewide
20 program that permits the posting of monetary bail
21 seven-days-a-week for defendants who remain in the custody of



1 the director of corrections and rehabilitation. This program
2 shall be made available to any defendant for whom a monetary
3 amount of bail has been set by the police, other law enforcement
4 agency, or the court. The judiciary may contract with a single
5 vendor to administer the program. The vendor may charge users
6 of the program a service fee. Upon posting of bail, the
7 defendant shall be released from custody forthwith."

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

10 "**§804-7.1 Conditions of release on bail, recognizance, or**
11 **supervised release.** Upon a showing that there exists a danger
12 that the defendant will commit a serious crime or will seek to
13 intimidate witnesses, or will otherwise unlawfully interfere
14 with the orderly administration of justice, the judicial officer
15 named in section 804-5 may deny the defendant's release on bail,
16 recognizance, or supervised release.

17 Upon the defendant's release on bail, recognizance, or
18 supervised release, [~~however,~~] the court may enter an order:

19 (1) Prohibiting the defendant from approaching or
20 communicating with particular persons or classes of
21 persons [~~, except~~]; provided that no such order should



1 be deemed to prohibit any lawful and ethical activity
2 of defendant's counsel;

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

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

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

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

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

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



- 1 (8) Requiring the defendant to remain in the jurisdiction
2 of the judicial circuit in which the charges are
3 pending unless approval is obtained from a court of
4 competent jurisdiction to leave the jurisdiction of
5 the court;
- 6 (9) Requiring the defendant to submit to the use of
7 electronic monitoring and surveillance;
- 8 (10) Requiring the confinement of the defendant in the
9 defendant's residence;
- 10 (11) Requiring the defendant to satisfy any other condition
11 reasonably necessary to ensure the appearance of the
12 defendant as required and to ensure the safety of any
13 other person or community; or
- 14 (12) Imposing any combination of conditions listed above;
15 provided that the court shall impose the least restrictive
16 [~~non-financial~~] nonfinancial conditions required to ensure the
17 defendant's appearance and to protect the public. Unless
18 specifically required by another statute, to the extent the
19 conditions of release require electronic monitoring and
20 surveillance, the department of corrections and rehabilitation
21 shall be responsible for the cost, and the defendant shall not



1 be charged; provided that the department may seek reimbursement
2 from the defendant or file a claim or complaint for lost
3 equipment or damages to the equipment. The department's
4 responsibilities regarding electronic monitoring and
5 surveillance shall be subject to legislative appropriations
6 specifically for this purpose.

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

10 PART XI

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

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

17 "SECTION 15. This Act shall take effect on January 1,
18 2021; provided that sections 2[~~7-37~~] and 4 shall be repealed on
19 June 30, 2026; provided further that sections 706-623[~~7-709-~~
20 ~~9067~~] and 853-4, Hawaii Revised Statutes, shall be reenacted in



1 the form in which they read on the day prior to the effective
2 date of this Act."

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

5 "SECTION 4. This Act shall take effect upon its approval;
6 provided that section 1 shall be repealed on June 30, 2026;
7 provided further that section 709-906, Hawaii Revised Statutes,
8 shall be reenacted in the form in which it read on [~~December 31,~~
9 ~~2020.~~] the day prior to the effective date of this Act."

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

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

20 PART XII



1 SECTION 39. This Act does not affect rights and duties
2 that matured, penalties that were incurred, and proceedings that
3 were begun before its effective date.

4 SECTION 40. Statutory material to be repealed is bracketed
5 and stricken. New statutory material is underscored.

6 SECTION 41. This Act shall take effect on September 1,
7 2026; provided that:

8 (1) Section 17 and part XI shall take effect on June 29,
9 2026; provided further that the amendments made to
10 section 706-623(1), Hawaii Revised Statutes, by
11 section 17 of this Act shall not be repealed when that
12 section is reenacted on June 30, 2026, pursuant to
13 section 15 of Act 19, Session Laws of Hawaii 2020; and

14 (2) The amendments made to section 709-906(19), Hawaii
15 Revised Statutes, by section 19 of this Act shall not
16 be repealed when that section is reenacted on June 30,
17 2026, pursuant to section 4 of Act 238, Session Laws
18 of Hawaii 2021.



S.B. NO. 2721
S.D. 1
H.D. 1
C.D. 1

Report Title:

Hawaii Penal Code; Advisory Committee Recommendations;
Implementation

Description:

Implements recommendations from the 2025 Advisory Committee on Penal Code Review, established pursuant to Act 245, SLH 2024, to amend the Hawaii Penal Code. Effective 9/1/2026. (CD1)

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

