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# A BILL FOR AN ACT

RELATING TO THE ADMINISTRATION OF JUSTICE.

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

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PART I

SECTION 1. The legislature finds that Act 245, Session Laws 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



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





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

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

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

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



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

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

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

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

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

16 PART III

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

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



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

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

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

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

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



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

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

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

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

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

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

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



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

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

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

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

20           "(1) A person shall not be liable under section 705-520  
21           for criminal conspiracy if under sections 702-224(1) and (2) and



1 702-225(1) [~~he~~] the person would not be legally accountable for  
2 the conduct of the other person.

3 (2) It is not a defense to a prosecution under section  
4 705-520 that a person with whom the defendant conspires could  
5 not be guilty of committing the crime because:

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

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

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

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

18 PART IV

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



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

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

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

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 corrections and rehabilitation and the department  
12 of health may disclose all relevant records between themselves  
13 regarding a defendant moved between departments. No further  
14 disclosure of records shall be made except as provided by law.

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



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

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

17 **"§704-406 Effect of finding of unfitness to proceed and**  
18 **regained fitness to proceed.** (1) If the court determines that  
19 the defendant lacks fitness to proceed, the proceeding against  
20 the defendant shall be suspended, except as provided in sections  
21 704-407 and 704-421, and the court shall commit the defendant to



1 the custody of the director of health to be placed in an  
2 appropriate institution for detention, assessment, care, and  
3 treatment; provided that:

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

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

13 If the court is satisfied that the defendant may be released on  
14 conditions without danger to the defendant or to another or risk  
15 of substantial danger to property of others, the court shall  
16 order the defendant's release, which shall continue at the  
17 discretion of the court, on conditions the court determines  
18 necessary; provided that the release on conditions of a  
19 defendant charged with a misdemeanor not involving violence or  
20 attempted violence shall continue for no longer than one hundred  
21 twenty days. A copy of all reports filed pursuant to section



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



1 investigatory interest. The department of corrections and  
2 rehabilitation and the department of health may disclose all  
3 relevant records between themselves regarding a defendant moved  
4 between departments. No further disclosure of records shall be  
5 made except as provided by law.

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

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



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



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



1 specific evaluation ordered. If, [~~however,~~] after a  
2 determination that the defendant has regained fitness, the court  
3 is of the view that so much time has elapsed since the  
4 commitment or release on conditions of the defendant that it  
5 would be unjust to resume the proceeding, the court may dismiss  
6 the charge and:

7 (a) Order the defendant to be discharged;

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

13 (c) Subject to section 334-121 regarding assisted  
14 community treatment criteria, order the defendant to  
15 be released on conditions the court determines  
16 necessary.

17 (4) [~~An examination for regained fitness to proceed~~  
18 ~~performed under this section may employ any method that is~~  
19 ~~accepted by the professions of medicine or psychology for the~~  
20 ~~examination of those alleged to be affected by a physical or~~  
21 ~~mental disease, disorder, or defect, and shall include a review~~



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

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

- 14 ~~(a) A description of the nature of the examination;~~  
15 ~~(b) An opinion as to the defendant's capacity to~~  
16 ~~understand the proceedings against the defendant and~~  
17 ~~to assist in the defendant's own defense; and~~  
18 ~~(c) Where more than one examiner is appointed, a statement~~  
19 ~~that the opinion rendered was arrived at independently~~  
20 ~~of any other examiner, unless there is a showing to~~  
21 ~~the court of a clear need for communication between or~~



1           ~~among the examiners for clarification. A description~~  
 2           ~~of the communication shall be included in the report.~~  
 3           ~~After all reports are submitted to the court,~~  
 4           ~~examiners may confer without restriction.~~

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

9           ~~(7)]~~ (5) If a defendant who has either been committed to  
 10          the custody of the director of health for a limited period  
 11          pursuant to subsection ~~[(1)]~~ (1)(b) or released on conditions  
 12          for a limited period pursuant to subsection (1) is not found fit  
 13          to proceed prior to the expiration of the commitment, the charge  
 14          for which the defendant was committed for a limited period shall  
 15          be dismissed. Upon dismissal of the charge, the defendant shall  
 16          be released from custody or discharged from the release on  
 17          conditions, whichever is applicable, unless the defendant is  
 18          subject to prosecution for other charges or subject to section  
 19          334-60.2 regarding involuntary hospitalization criteria, in  
 20          which case the court shall order the defendant's commitment to  
 21          the custody of the director of health to be placed in an



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

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



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

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



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

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

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

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



1 examiner. The department of health and the department of  
2 corrections and rehabilitation shall provide secure access to  
3 defendants in their custody for any examination requested to be  
4 conducted utilizing telehealth."

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

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



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



1 PART V

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

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

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

- 11 (a) Ten years upon conviction of a class A felony;
- 12 (b) Five years upon conviction of a class B or class C  
13 felony under part II, V, or VI of chapter 707,  
14 chapter 709, and part I of chapter 712 [~~and four~~];
- 15 (c) Four years upon conviction of any other class B [~~or C~~  
16 felony[+], a class C felony under part III, IV, or VII  
17 of chapter 707, and a class C felony under part XIII  
18 of chapter 708;
- 19 (d) Three years upon conviction of any other class C  
20 felony;



1       ~~(e)~~ (e) One year upon conviction of a misdemeanor;  
2               except that upon a conviction under section 586-4,  
3               586-11, ~~or~~ 709-906, or 712-\_\_\_\_, the court may  
4               sentence the defendant to a period of probation not  
5               exceeding two years; or

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

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



1 PART VI

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

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

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

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

10 "Family or household member":

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

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





1 emergency medical services personnel, or emergency medical  
2 technician, the person knowingly disobeys an order or regulation  
3 relating to the conduct of persons in the vicinity of a fire.

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

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

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

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

16 "**§710-1021 Escape in the second degree.** (1) A person  
17 commits the offense of escape in the second degree if the person  
18 intentionally escapes from a correctional or detention facility  
19 or from custody.

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



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

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

11       ~~["§710-1011 Refusing to aid a law enforcement officer.~~  
12 ~~(1) A person commits the offense of refusing to aid a law~~  
13 ~~enforcement officer when, upon a reasonable command by a person~~  
14 ~~known to him to be a law enforcement officer, he intentionally~~  
15 ~~refuses or fails to aid such law enforcement officer, in:~~  
16       ~~(a) Effectuating or securing an arrest; or~~  
17       ~~(b) Preventing the commission by another of any offense.~~  
18       ~~(2) Refusing to aid a law enforcement officer is a petty~~  
19 ~~misdemeanor.~~  
20       ~~(3) A person who complies with this section by aiding a~~  
21 ~~law enforcement officer shall not be held liable to any person~~



1 ~~for damages resulting therefrom, provided he acted reasonably~~  
2 ~~under the circumstances known to him at the time."]~~

3 PART VIII

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

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

10 "§711- Consenting to unreasonable noise on premises. A  
11 renter, resident, owner-occupant, or other person responsible  
12 for a premises who intentionally, knowingly, recklessly, or  
13 negligently allows another person to make unreasonable noise on  
14 the premises shall be guilty of a violation."

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

18 "Make unreasonable noise" means to make noise that:  
19 (1) Considering the nature and purpose of the person's  
20 conduct and the circumstances known to the person,  
21 including the nature of the location and the time of



1           the day or night, involves a gross deviation from the  
2           standard of conduct that a law-abiding citizen would  
3           follow in the same situation; or  
4           (2) Fails to heed the admonition of a police officer that  
5           the noise is unreasonable and should be stopped or  
6           reduced."

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

9           "~~(2) [Noise is unreasonable, within the meaning of~~  
10 ~~subsection (1) (b), if considering the nature and purpose of the~~  
11 ~~person's conduct and the circumstances known to the person,~~  
12 ~~including the nature of the location and the time of the day or~~  
13 ~~night, the person's conduct involves a gross deviation from the~~  
14 ~~standard of conduct that a law-abiding citizen would follow in~~  
15 ~~the same situation; or the failure to heed the admonition of a~~  
16 ~~police officer that the noise is unreasonable and should be~~  
17 ~~stopped or reduced.~~

18           ~~The renter, resident, or owner-occupant of the premises who~~  
19 ~~knowingly or negligently consents to unreasonable noise on the~~  
20 ~~premises shall be guilty of a noise violation.] Except as~~  
21 provided in subsection (3), disorderly conduct is a violation.



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

6 PART IX

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

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

13 "§712- Possessing a dangerous drug in the second  
14 degree. (1) A person commits the offense of possessing a  
15 dangerous drug in the second degree if the person knowingly  
16 possesses any dangerous drug in any amount.

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

19 (3) Whenever a court sentences a person, grants a motion  
20 for deferral, or grants a conditional discharge, it shall also



1 require that the person completes a substance abuse assessment  
2 and treatment, if necessary.

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

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

10 "**§712-1243 [Promoting] Possessing a dangerous drug in the**  
11 **[third] first degree.** (1) A person commits the offense of  
12 **[promoting] possessing a dangerous drug in the [third] first**  
13 **degree if the person knowingly possesses [any dangerous drug in**  
14 **any amount.]:**

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

18 **(b) One or more preparations, compounds, mixtures, or**  
19 **substances of an aggregate weight of:**

20 **(i) 0.5 grams up to 3.53 grams containing**  
21 **methamphetamine, heroin, morphine, cocaine, or**



1                   fentanyl or any of their respective salts,  
2                   isomers, and salts of isomers; or  
3           (ii) 2.0 grams up to 6.99 grams containing any  
4                   dangerous drug.

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

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

9           "(1) Whenever any person who has not previously been  
10 convicted of any offense under this chapter or chapter 329 or  
11 under any statute of the United States or of any state relating  
12 to a dangerous drug, harmful drug, detrimental drug, or an  
13 intoxicating compound, pleads guilty to or is found guilty of  
14 promoting a dangerous drug, harmful drug, detrimental drug, or  
15 an intoxicating compound under section 712-1243, 712-1245,  
16 712-1246, 712-1248, 712-1249, [~~or~~] 712-1250, or 712-\_\_\_\_\_, the  
17 court, without entering a judgment of guilt and with the consent  
18 of the accused, may defer further proceedings and place the  
19 accused on probation upon terms and conditions. Upon violation  
20 of a term or condition, the court may enter an adjudication of  
21 guilt and proceed as otherwise provided."



1 PART X

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

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

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

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



1           "**§804-7.1 Conditions of release on bail, recognizance, or**  
2 **supervised release.** Upon a showing that there exists a danger  
3 that the defendant will commit a serious crime or will seek to  
4 intimidate witnesses, or will otherwise unlawfully interfere  
5 with the orderly administration of justice, the judicial officer  
6 named in section 804-5 may deny the defendant's release on bail,  
7 recognizance, or supervised release.

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

- 10           (1) Prohibiting the defendant from approaching or  
11           communicating with particular persons or classes of  
12           persons, except that no such order should be deemed to  
13           prohibit any lawful and ethical activity of  
14           defendant's counsel;
- 15           (2) Prohibiting the defendant from going to certain  
16           described geographical areas or premises;
- 17           (3) Prohibiting the defendant from possessing any  
18           dangerous weapon, engaging in certain described  
19           activities, or indulging in intoxicating liquors or  
20           certain drugs;



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



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

5           (12) Imposing any combination of conditions listed above;  
6           provided that the court shall impose the least restrictive  
7           non-financial conditions required to ensure the defendant's  
8           appearance and to protect the public. Unless specifically  
9           required by another statute, to the extent the conditions of  
10           release require electronic monitoring and surveillance, the  
11           department of corrections and rehabilitation shall be  
12           responsible for the cost, and the defendant shall not be  
13           charged; provided that the department may seek reimbursement  
14           from the defendant or file a claim or complaint for lost  
15           equipment or damages to the equipment. The department's  
16           responsibilities regarding electronic monitoring and  
17           surveillance shall be subject to legislative appropriations  
18           specifically for this purpose.

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



## 1 PART XI

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

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

8 "SECTION 15. This Act shall take effect on January 1,  
9 2021; provided that sections 2[~~3~~] and 4 shall be repealed on  
10 June 30, 2026; provided further that sections 706-623[~~709-906~~,]  
11 and 853-4, Hawaii Revised Statutes, shall be reenacted in the  
12 form in which they read on the day prior to the effective date  
13 of this Act."

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

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

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





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

6



S.B. NO. 2721  
S.D. 1

**Report Title:**

Hawaii Penal Code; Committee Recommendations; Implementation

**Description:**

Implements recommendations pursuant to Act 245, SLH 2024, to amend the Hawaii Penal Code. (SD1)

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

