

ACT 136

H. B. NO. 59

A Bill for an Act Relating to the Hawaii Penal Code.

Be It Enacted by the Legislature of the State of Hawaii:

SECTION 1. Purpose. The legislature finds that: the Hawaii Penal Code was passed and approved into law April 7, 1972; the effective date of the Hawaii Penal Code was January 1, 1973; that various suggestions have been made to amend the Hawaii Penal Code to correct typographical and grammatical errors, and other errors discovered by various groups in preparation for use of the code.

SECTION 2. Chapter 701, Hawaii Revised Statutes, is amended as follows:

(a) Section 701-114, Hawaii Revised Statutes, is amended to read as follows:

“Sec. 701-114 Proof beyond a reasonable doubt.

(1) Except as otherwise provided in section 701-115, no person may be convicted of an offense unless the following are proved beyond a reasonable doubt:

- (a) each element of the offense;
- (b) the state of mind required to establish each element of the offense;
- (c) facts establishing jurisdiction;
- (d) facts establishing venue; and
- (e) facts establishing that the offense was committed within the time period specified in section 108.

(2) In the absence of the proof required by subsection (1), the innocence of the defendant is presumed.”

(b) Section 701-115, Hawaii Revised Statutes, is amended to read as follows:

“Sec. 701-115 Defenses.

(1) A defense is a fact or set of facts which negatives penal liability.
 (2) No defense may be considered by the trier of fact unless evidence of the specified fact or facts has been presented. If such evidence is presented, then:

- (a) if the defense is not an affirmative defense, the defendant is entitled to an acquittal if the trier of fact finds that the evidence, when con-

- sidered in the light of any contrary prosecution evidence, raises a reasonable doubt as to the defendant's guilt; or
- (b) if the defense is an affirmative defense, the defendant is entitled to an acquittal if the trier of fact finds that the evidence, when considered in light of any contrary prosecution evidence, proves by a preponderance of the evidence the specified fact or facts which negative penal liability.
- (3) A defense is an affirmative defense if:
- (a) it is specifically so designated by the Code or another statute; or
 - (b) if the Code or another statute plainly requires the defendant to prove the defense by a preponderance of the evidence."

SECTION 3. Chapter 702, Hawaii Revised Statutes, is amended as follows:

(a) Section 702-216, Hawaii Revised Statutes, is amended to read as follows:

"Sec. 702-216 Reckless or negligent causation; different result from that within the risk.

Recklessly or negligently causing a particular result is not established if the actual result is not within the risk of which the defendant is, or, in the case of negligence, should be, aware unless:

(1) the actual result differs from the probable result only in the respect that a different person or different property is injured or affected or that the probable injury or harm would have been more serious or more extensive than that caused; or

(2) the actual result involves the same kind of injury or harm as the probable result and is not too remote or accidental in its occurrence or too dependent on another's volitional conduct to have a bearing on the defendant's liability or on the gravity of his offense."

(b) Section 702-220, Hawaii Revised Statutes, is amended to read as follows:

"Sec. 702-220 Ignorance or mistake of law; belief that conduct not legally prohibited.

In any prosecution, it shall be an affirmative defense that the defendant engaged in the conduct or caused the result alleged under the belief that the conduct or result was not legally prohibited when he acts in reasonable reliance upon an official statement of the law, afterward determined to be invalid or erroneous, contained in:

- (1) a statute or other enactment;
- (2) a judicial decision, opinion, or judgment;
- (3) an administrative order or administrative grant of permission; or
- (4) an official interpretation of the public officer or body charged by law with responsibility for the interpretation, administration, or enforcement of the law defining the offense."

SECTION 4. Chapter 704, Hawaii Revised Statutes, is amended as follows:

(a) Section 704-402, Hawaii Revised Statutes, is amended to read as follows:

“Sec. 704-402 Physical or mental disease, disorder, or defect excluding responsibility is a defense; form of verdict and judgment when finding of irresponsibility is made.

- (1) Physical or mental disease, disorder, or defect excluding responsibility is a defense.
- (2) Whenever the defense provided for by subsection (1) is submitted to a jury, the court shall, if requested by the defendant, instruct the jury as to the consequences to the defendant of an acquittal on the ground of physical or mental disease, disorder, or defect excluding responsibility.
- (3) When the defendant is acquitted on the ground of physical or mental disease, disorder, or defect excluding responsibility, the verdict and the judgment so state.”

(b) Section 704-404, Hawaii Revised Statutes, is amended to read as follows:

“Sec. 704-404 Examination of defendant with respect to physical or mental disease, disorder, or defect.

(1) Whenever the defendant has filed a notice of intention to rely on the defense of physical or mental disease, disorder, or defect excluding responsibility, or there is reason to doubt his fitness to proceed, or reason to believe that the physical or mental disease, disorder, or defect of the defendant will or has become an issue in the case, the court may immediately suspend all further proceedings in the prosecution. If a trial jury has been empanelled, it shall be discharged or retained at the discretion of the court. The dismissal of the trial jury shall not be a bar to further prosecution.

(2) Upon suspension of further proceedings in the prosecution the court shall appoint a state-employed physician designated by the director of health from within the department of health and two additional unbiased, qualified physicians to examine and report upon the physical and mental condition of the defendant. The court may order the defendant to be committed to a hospital or other suitable facility for the purpose of the examination for a period not exceeding thirty days, or such longer period as the court determines to be necessary for the purpose, and may direct that one or more qualified physicians retained by the defendant be permitted to witness and participate in the examination.

(3) In such examination any method may be employed which is accepted by the medical profession for the examination of those alleged to be suffering from physical or mental disease, disorder, or defect and the examiners may, upon approval of the court, secure the services of clinical psychologists and other medical or paramedical specialists to assist in the examination and diagnosis.

(4) The report of the examination shall include the following:

- (a) a description of the nature of the examination;
- (b) a diagnosis of the physical or mental condition of the defendant;
- (c) an opinion as to his capacity to understand the proceedings against

- him and to assist in his own defense;
 - (d) an opinion as to the extent, if any, to which the capacity of the defendant to appreciate the wrongfulness of his conduct or to conform his conduct to the requirements of law was impaired at the time of the conduct alleged; and
 - (e) when directed by the court, an opinion as to the capacity of the defendant to appreciate the wrongfulness of his conduct or to conform his conduct to the requirements of law was impaired at the time of the conduct alleged; and
 - (f) when directed by the court, an opinion as to the capacity of the defendant to have a particular state of mind which is required to establish an element of the offense charged.
- (5) If the examination cannot be conducted by reason of the unwillingness of the defendant to participate therein, the report shall so state and shall include, if possible, an opinion as to whether such unwillingness of the defendant was the result of physical or mental disease, disorder, or defect.
- (6) The report of the examination, including any supporting documents, shall be filed in triplicate with the clerk of the court, who shall cause copies to be delivered to the prosecuting attorney and to counsel for the defendant.
- (7) Any examiner shall be permitted to make a separate explanation reasonably serving to clarify his diagnosis or opinion.
- (8) There shall be made accessible to the examiners all existing medical, social, and other pertinent records in the custody of public agencies notwithstanding any other statutes.
- (9) The compensation of persons making or assisting in the examination, other than those retained by the nonindigent defendant, who are not undertaking the examination upon designation by the director of health as part of their normal duties as employees of the State or a county, shall be paid by the State.”

SECTION 5. Section 706-624, Hawaii Revised Statutes, is amended as follows:

“Sec. 706-624 Conditions of suspension of sentence or probation.

- (1) When the court suspends the imposition of sentence on a person who has been convicted of a crime or sentence him to be placed on probation, it shall attach such reasonable conditions, authorized by this section, as it deems necessary to insure that he will lead a law-abiding life or likely to assist him to do so.
- (2) The court, as a condition of its order, may require the defendant:
- (a) to meet his family responsibilities;
 - (b) to devote himself to an employment or occupation;
 - (c) to undergo available medical or psychiatric treatment and to enter and remain in a specified institution, when required for that purpose;
 - (d) to pursue a prescribed secular course of study or vocational training;
 - (e) to attend or reside in a facility established for the instruction, recreation or residence of persons on probation;
 - (f) to refrain from frequenting unlawful or disreputable places or consorting with disreputable persons;

- (g) to have in his possession no firearms or other dangerous instruments unless granted written permission by the court;
 - (h) to make restitution of the fruits of his crimes or to make reparation, in an amount he can afford to pay, for the loss or damage caused thereby;
 - (i) to remain within the jurisdiction of the court and to notify the court or the probation officer of any change in his address or his employment;
 - (j) to report as directed to the court or the probation officer and to permit the officer to visit his home;
 - (k) to post a bond, with or without surety, conditioned on the performance of any of the foregoing obligations;
 - (l) to satisfy any other conditions reasonably related to the rehabilitation of the defendant and not unduly restrictive of his liberty or incompatible with his freedom of conscience.
- (3) When the court sentences a person who has been convicted of a felony or misdemeanor to be placed on probation, it may require him to serve a term of imprisonment not exceeding six months as an additional condition of its order. The court may order that the term of imprisonment be served intermittently.

(4) The defendant shall be given a written copy of any requirements imposed pursuant to this section, stated with sufficient specificity to enable him to guide himself accordingly."

SECTION 6. Section 707-700, Hawaii Revised Statutes, which sets forth definitions which are used in Chapter 707 is amended by amending subsection 707-700(11) relating to the definition of the word "married" as follows:

"(11) "Married" includes persons legally married, and a male and female living together as man and wife regardless of their legal status, but does not include spouses living apart under a judicial decree;"

SECTION 7. Chapter 708, Hawaii Revised Statutes, is amended as follows:

(a) Section 708-800, Hawaii Revised Statutes, which sets forth definitions used in Chapter 708 is amended by amending subsection 708-800(1) relating to the definition of the word "Building" as follows:

"(1) 'Building' includes any structure, vehicle, railway car, aircraft, or watercraft used for lodging of persons therein; each unit of a building consisting of two or more units separately secured or occupied is a separate building;"

(b) Section 708-821, Hawaii Revised Statutes, is amended to read as follows:

"Sec. 708-821 Criminal property damage in the second degree.

(1) A person commits the offense of criminal property damage in the second degree if:

(a) he intentionally damages property of another, without his consent, by the use of widely dangerous means; or

(b) he intentionally damages the property of another, without his consent, in an amount exceeding \$500.

(2) Criminal property damage in the second degree is a class C felony.”

(c) Section 708-822, Hawaii Revised Statutes, is amended to read as follows:

“Sec. 708-822 Criminal property damage in the third degree.

(1) A person commits the offense of criminal property damage in the third degree if:

- (a) he recklessly damages property of another, without his consent, by the use of widely dangerous means; or
- (b) he intentionally damages the property of another, without his consent, in an amount exceeding \$50.

(2) Criminal property damage in the third degree is a misdemeanor.”

SECTION 8. Chapter 710, Hawaii Revised Statutes, is amended as follows:

(a) Section 710-1077, Hawaii Revised Statutes, is amended to read as follows:

“Sec. 710-1077 Criminal contempt of court.

(1) A person commits the offense of criminal contempt of court if:

- (a) he recklessly engages in disorderly or contemptuous behavior, committed during the sitting of a court in its immediate view and presence, and directly tending to interrupt its proceedings or impair the respect due to its authority; or
- (b) he creates a breach of peace or a disturbance with intent to interrupt a court’s proceedings; or
- (c) as an attorney, clerk, or other officer of the court, he knowingly fails to perform or violates a duty of his office, or knowingly disobeys a lawful directive or order of a court; or
- (d) he knowingly publishes a false report of a court’s proceedings; or
- (e) knowing that he is not authorized to practice law, he represents himself to be an attorney and acts as such in a court proceeding; or
- (f) he intentionally records or attempts to record the deliberation of a jury; or
- (g) he intentionally disobeys or resists the process, injunction, or other mandate of a court; or
- (h) he intentionally refuses to be qualified as a witness in any court or, after being qualified, to answer any proper interrogatory without a privilege to refuse to answer; or
- (i) being a juror, he intentionally, without permission of the court, fails to attend a trial or official proceeding to which he has been summoned or at which he has been chosen to serve.

(2) Except as provided in subsection (3), criminal contempt of court is a misdemeanor.

(3) The court may treat the commission of an offense under subsection (1) as a petty misdemeanor, in which case:

- (a) if the offense was committed in the immediate view and presence of the court, or under such circumstances that the court has knowledge of all of the facts constituting the offense, the court may order

summary conviction and disposition; and

- (b) if the offense was not committed in the immediate view and presence of the court, nor under such circumstances that the court has knowledge of all of the facts constituting the offense, the court shall order the defendant to appear before it to answer a charge of criminal contempt of court; the trial, if any, upon the charge shall be by the court without a jury; and proof of guilt beyond a reasonable doubt shall be required for conviction.

(4) When the contempt under subsection (1) also constitutes another offense, the contemnor may be charged with and convicted of the other offense notwithstanding the fact that he has been charged with or convicted of the contempt.

(5) Whenever any person is convicted of criminal contempt of court or sentenced therefor, the particular circumstances of the offense shall be fully set forth in the judgment and in the order or warrant of commitment. In any proceeding for review of the judgment, sentence, or commitment, no presumption of law shall be made in support of the jurisdiction to render the judgment, pronounce the sentence, or order the commitment. A judgment, sentence, or commitment under subsection (3)(a) shall not be subject to review by appeal, but shall be subject to review in an appropriate proceeding for an extraordinary writ or in a special proceeding for review.

All other judgments, sentences, or commitments for criminal contempt of court shall be subject to review by appeal, in a proceeding for an appropriate extraordinary writ, or in a special proceeding for review.

(6) Nothing in this section shall be construed to alter the court's power to punish civil contempt. When the contempt consists of the refusal to perform an act which the contemnor has the power to perform, he may be imprisoned until he has performed it. In such a case the act shall be specified in the warrant of commitment. In any proceeding for review of the judgment or commitment, no presumption of law shall be made in support of the jurisdiction to render the judgment or order the commitment."

SECTION 9. Chapter 711, Hawaii Revised Statutes, is amended as follows:

(a) Section 711-1101, Hawaii Revised Statutes, is amended to read as follows:

"Sec. 711-1101 Disorderly conduct.

(1) A person commits the offense of disorderly conduct if, with intent to cause physical inconvenience or alarm by members of the public, or recklessly creating a risk thereof, he:

- (a) engages in fighting or threatening, or in violent or tumultuous behavior; or
- (b) makes unreasonable noise or makes any offensively coarse utterance, gesture, or display, or addresses abusive language to any person present, which is likely to provoke a violent response;
- (c) creates a hazardous or physically offensive condition by any act which is not performed under any authorized license or permit.

ACT 136

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

(b) Section 711-1106, Hawaii Revised Statutes, is amended to read as follows:

"Sec. 711-1106 Harassment.

(1) A person commits the offense of harassment if, with intent to harass, annoy, or alarm another person, he:

- (a) strikes, shoves, kicks, or otherwise touches a person in an offensive manner or subjects him to offensive physical contact; or
- (b) insults, taunts, or challenges another person in a manner likely to provoke a violent response; or
- (c) makes a telephone call without purpose of legitimate communication; or
- (d) makes repeated communications anonymously, or at extremely inconvenient hours, or in offensively coarse language.

(2) Harassment is a petty misdemeanor."

SECTION 10. Section 712-1212, Hawaii Revised Statutes, is repealed.

SECTION 11. Statutory material to be repealed is bracketed. New material is underscored. In printing this Act, the revisor of statutes need not include the brackets, the bracketed material, or the underscoring.*

SECTION 12. This Act shall take effect upon its approval.

(Approved May 22, 1973.)

*Edited accordingly.