

ACT 314

H.B. NO. 100

A Bill for an Act Relating to the Penal Code.

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

SECTION 1. Sections 701-100 to 701-101, Hawaii Revised Statutes, are amended to read as follows:

“§701-100 Title and effective date of amendments. Title 37 shall be known as the Hawaii Penal Code. [It] Amendments made to this Code by Act , Session Laws of Hawaii 1986, shall become effective on [January 1, 1973.] January 1, 1987.

§701-101 Applicability to offenses committed before the effective date of amendments. (1) Except as provided in subsections (2) and (3), amendments made by Act , Session Laws of Hawaii 1986, to this Code [does] do not apply to offenses committed before [its] the effective date[.] of Act , Session Laws of Hawaii 1986. Prosecutions for offenses committed before the effective date of Act , Session Laws of Hawaii 1986, are governed by the prior law, which is continued in effect for that purpose, as if amendments made by Act , Session Laws of Hawaii 1986, to this Code were not in force. For purposes of this section, an offense is committed before the effective date of Act , Session Laws of Hawaii 1986, if any of the elements of the offense occurred before that date.

(2) In any case pending on or commenced after the effective date of amendments made by Act , Session Laws of Hawaii 1986, to this Code, involving an offense committed before that date[:

- (a) Upon the request of the defendant a defense or mitigation under this Code, whether specifically provided for herein or based upon the failure of the Code to define an applicable offense, shall apply; and
- (b) Upon the request of the defendant and the approval of the court:

- (i) Procedural provisions of this Code shall apply insofar as they are justly applicable; and
- (ii) The court may impose a sentence or suspend imposition of a sentence under the provisions of this Code applicable to the offense and the offender.

(3) Provisions of this Code governing the release or discharge of prisoners, probationers, and parolees shall apply to persons under sentence for offenses committed before the effective date of this Code, except that the minimum or maximum period of their detention or supervision shall in no case be increased, nor shall the provisions of this Code affect the substantive or procedural validity of any judgment of conviction entered before the effective date of this Code, regardless of the fact that appeal time has not run or that an appeal is pending.] upon the request of the defendant, and subject to the approval of the court, the provisions of chapter 706 amended by Act , Session Laws of Hawaii 1986, may be applied in particular cases.”

SECTION 2. Section 701-105, Hawaii Revised Statutes, is amended to read as follows:

“§701-105 Effect of commentary. The commentary accompanying [the Judicial Council of Hawaii’s proposed draft of the Hawaii Penal Code (1970), as revised,] this Code shall be published and may be used as an aid in understanding the provisions of this Code, but not as evidence of legislative intent.”

SECTION 3. Section 701-117, Hawaii Revised Statutes, is amended to read as follows:

“§701-117 Prima facie evidence. Prima facie evidence of a fact is evidence which, if accepted in its entirety by the trier of fact, is sufficient to prove the fact[, provided that no evidence negating the fact, which raises a reasonable doubt in the mind of the trier of fact, is introduced]. Prima facie evidence provisions in this Code are governed by section 626-1, rule 306.”

SECTION 4. Section 702-206, Hawaii Revised Statutes, is amended by amending subsections (3) and (4) to read as follows:

- “(3) “Recklessly.”
 - (a) A person acts recklessly with respect to his conduct when he consciously disregards a substantial and unjustifiable risk [by engaging in such conduct.] that the person’s conduct is of the specified nature.
 - (b) A person acts recklessly with respect to attendant circumstances when he consciously disregards a substantial and unjustifiable risk that such circumstances exist.
 - (c) A person acts recklessly with respect to a result of his conduct when he consciously disregards a substantial and unjustifiable risk that his conduct will cause such a result.
 - (d) A risk is substantial and unjustifiable within the meaning of this section if, considering the nature and purpose of the person’s conduct and the circumstances known to him, the disregard of the risk involves a gross deviation from the standard of conduct that a law-abiding person would observe in the same situation.
- (4) “Negligently.”
 - (a) A person acts negligently with respect to his conduct when he should be aware of a substantial and unjustifiable risk taken [by

engaging in such conduct.] that the person's conduct is of the specified nature.

- (b) A person acts negligently with respect to attendant circumstances when he should be aware of a substantial and unjustifiable risk that such circumstances exist.
- (c) A person acts negligently with respect to a result of his conduct when he should be aware of a substantial and unjustifiable risk that his conduct will cause such a result.
- (d) A risk is substantial and unjustifiable within the meaning of this subsection if the person's failure to perceive it, considering the nature and purpose of his conduct and the circumstances known to him, involves a gross deviation from the standard of care that a law-abiding person would observe in the same situation."

SECTION 5. Section 703-300, Hawaii Revised Statutes, is amended to read as follows:

"§703-300 Definitions relating to justification. In this chapter, unless a different meaning is plainly required:

[(1)] "Believes" means reasonably believes.

[(2)] "Force" means any bodily impact, restraint, or confinement, or the threat thereof.

[(3)] "Unlawful force" means force which is employed without the consent of the person against whom it is directed and the employment of which constitutes an offense or would constitute an offense except for a defense not amounting to a justification to use the force. Assent constitutes consent, within the meaning of this section, whether or not it otherwise is legally effective, except assent to the infliction of death or serious or substantial bodily injury.

[(4)] "Deadly force" means force which the actor uses with the intent of causing or which he knows to create a substantial risk of causing death or serious bodily harm. Intentionally firing a firearm in the direction of another person or in the direction which another person is believed to be constitutes deadly force. A threat to cause death or serious bodily injury, by the production of a weapon or otherwise, so long as the actor's intent is limited to creating an apprehension that he will use deadly force if necessary, does not constitute deadly force.

[(5)] "Dwelling" means any building or structure, though movable or temporary, or a portion thereof, which is for the time being a home or place of lodging."

SECTION 6. Section 703-302, Hawaii Revised Statutes, is amended to read as follows:

"§703-302 Choice of evils. (1) Conduct which the actor believes to be necessary to avoid an imminent harm or evil to himself or to another is justifiable provided that:

- (a) The harm or evil sought to be avoided by such conduct is greater than that sought to be prevented by the law defining the offense charged; and
- (b) Neither the Code nor other law defining the offense provides exceptions or defenses dealing with the specific situation involved; and
- (c) A legislative purpose to exclude the justification claimed does not otherwise plainly appear.

(2) When the actor was reckless or negligent in bringing about the situation requiring a choice of harms or evils or in appraising the necessity for his conduct, the justification afforded by this section is unavailable in a prosecution for any offense for which recklessness or negligence, as the case may be, suffices to establish culpability.

(3) In a prosecution for escape under section 710-1020 or 710-1021, the defense available under this section is limited to an affirmative defense consisting of the following elements:

- (a) The actor receives a threat, express or implied, of death, substantial bodily injury, or forcible sexual attack;
- (b) Complaint to the proper prison authorities is either impossible under the circumstances or there exists a history of futile complaints;
- (c) Under the circumstances there is no time or opportunity to resort to the courts;
- (d) No force or violence is used against prison personnel or other innocent persons; and
- (e) The actor promptly reports to the proper authorities when the actor has attained a position of safety from the immediate threat.”

SECTION 7. Section 704-406, Hawaii Revised Statutes, is amended to read as follows:

“§704-406 Effect of finding of unfitness to proceed. (1) If the court determines that the defendant lacks fitness to proceed, the proceeding against him shall be suspended, except as provided in section 704-407, and the court shall commit him to the custody of the director of health to be placed in an appropriate institution for detention, care, and treatment [for so long as such unfitness shall endure]. If the court is satisfied that the defendant may be released on condition without danger to himself or to the person or property of others, the court shall order his release, which shall continue at the discretion of the court, on such conditions as the court determines necessary. A copy of the report filed pursuant to section 704-404 shall be attached to the order of [commitment] commitment or order of conditional release.

(2) When the court, on its own motion or upon the application of the director of health, the prosecuting attorney, or the defendant, determines, after a hearing if a hearing is requested, that the defendant has regained fitness to proceed, the penal proceeding shall be resumed. If, however, the court is of the view that so much time has elapsed since the commitment or conditional release of the defendant that it would be unjust to resume the proceeding, the court may dismiss the charge and may order the defendant to be discharged or, subject to the law governing the involuntary hospitalization or conditional release of persons suffering from physical or mental disease, disorder, or defect, order the defendant to be committed to the custody of the director of health to be placed in an appropriate institution for detention, care, and treatment or order the defendant to be released on such conditions as the court determines necessary.

(3) Within a reasonable time following any commitment under subsection (1), the director of health shall report to the court whether or not the defendant presents a substantial likelihood of becoming fit to proceed in the future. If, following such a report, the court determines that the defendant will probably remain unfit to proceed, the court may dismiss the charge and release the defendant or subject the defendant to involuntary civil commitment procedures.”

SECTION 8. Section 704-411, Hawaii Revised Statutes, is amended by amending subsection (3) to read as follows:

“(3) When ordering such a hearing the court shall appoint three qualified examiners to examine and report upon the physical and mental condition of the defendant. In each case the court shall appoint at least one psychiatrist and at least one [certified clinical] licensed psychologist. The third member may be either a psychiatrist, [certified clinical] licensed psychologist, or a qualified physician. One of the three shall be a psychiatrist or [certified clinical] licensed psychologist designated by the director of health from within the department of health. To facilitate such examination and the proceedings thereon, the court may cause the defendant, if not then so confined, to be committed to a hospital or other suitable facility for the purpose of examination and may direct that qualified physicians retained by the defendant be permitted to witness and participate in the examination. The examination and report and the compensation of persons making or assisting in the examination shall be in accord with section 704-404(3), (4)(a) and (b), (6), (7), (8), and (9). As used in this section, the term “licensed psychologist” includes psychologists exempted from licensure by chapter 465-3(3).”

SECTION 9. Section 704-414, Hawaii Revised Statutes, is amended to read as follows:

“**§704-414 Procedure upon application for discharge, conditional release, or modification of conditions of release.** Upon filing of an application pursuant to section 704-412 for discharge or conditional release, or upon the filing of an application pursuant to section 704-413 for discharge or for modification of conditions of release, the court shall appoint three qualified examiners to examine and report upon the physical and mental condition of the defendant. In each case the court shall appoint at least one psychiatrist and at least one [certified clinical] licensed psychologist. The third member may be either a psychiatrist, [certified clinical] licensed psychologist or qualified physician. One of the three shall be a psychiatrist or [certified clinical] licensed psychologist designated by the director of health from within the department of health. To facilitate such examination and the proceedings thereon, the court may cause such person, if not then so confined, to be committed to a hospital or other suitable facility for the purpose of the examination and may direct that qualified physicians retained by the person be permitted to witness and participate in the examination. The examination and report and the compensation of persons making or assisting in the examination shall be in accord with section 704-404(3), (4)(a) and (b), (6), (7), (8), and (9). As used in this section, the term “licensed psychologist” includes psychologists exempted from licensure by chapter 465-3(3).”

SECTION 10. Section 706-600, Hawaii Revised Statutes, is amended to read as follows:

“**§706-600 Sentence in accordance with this chapter.** No sentence shall be imposed [or suspended] otherwise than in accordance with this chapter.”

SECTION 11. Section 706-601, Hawaii Revised Statutes, is amended by amending subsection (1) to read as follows:

“(1) The court shall order a pre-sentence correctional diagnosis of the defendant and accord due consideration to a written report of the diagnosis before [suspending or] imposing sentence where:

- (a) The defendant has been convicted of a felony; or

- (b) The defendant is less than twenty-two years of age and has been convicted of a crime.”

SECTION 12. Section 706-603, Hawaii Revised Statutes, is amended to read as follows:

“§706-603 Pre-sentence mental and medical examination. Before [suspending or] imposing sentence, the court may order a defendant who has been convicted of a felony or misdemeanor to submit to mental and other medical observation and examination for a period not exceeding sixty days or such longer period, not to exceed the length of permissible imprisonment, as the court determines to be necessary for the purpose. The defendant may be remanded for this purpose to any available clinic or hospital, intake service center, or community correctional center and, in addition thereto or in the alternative, the court may appoint one or more qualified psychiatrists, physicians, or [certified clinical] licensed psychologists to make the examination. [If a single examiner is appointed, he shall be a qualified psychiatrist or certified clinical psychologist. If a three-member panel is appointed one shall be a psychiatrist and one shall be a certified clinical psychologist. The third member may be either a psychiatrist, certified clinical psychologist, or qualified physician. One of the three shall be a psychiatrist or certified clinical psychologist designated by the director of health from within the department of health.] The report of the examination shall be submitted to the court. As used in this section, the term “licensed psychologist” includes psychologists exempted from licensure by chapter 465-3(3).”

SECTION 13. Section 706-604, Hawaii Revised Statutes, is amended by amending subsection (1) to read as follows:

“(1) Before [suspending or] imposing sentence, the court shall afford a fair opportunity to the defendant to be heard on the issue of his disposition.”

SECTION 14. Section 706-605, Hawaii Revised Statutes, is amended to read as follows:

“§706-605 Authorized disposition of convicted defendants. (1) Except as provided in [section 706-606] parts II and IV of this chapter and subsection (2) of this section and subject to the applicable provisions of this Code, the court may [suspend the imposition of sentence on a person who has been convicted of a crime, may order the person to be committed in lieu of sentence in accordance with section 706-607, or may sentence the person as follows:] sentence a convicted defendant to one or more of the following dispositions:

- (a) To be placed on probation as authorized by part II of this chapter; [or]
- (b) To pay a fine as authorized by part III and section 706-624 of this chapter; [or]
- (c) To be imprisoned for a term as authorized by part IV of this chapter; [or]
- (d) To pay a fine and to probation or to pay a fine and to imprisonment, but not to probation and imprisonment, except as authorized by part II of this chapter; or
- (e) (d) To make restitution [or reparation to the victim or victims of the person’s crime] in an amount the [person] defendant can afford to pay[, for loss or damage caused thereby in addition to paragraph (a), (b), (c), (d), or (f) of this subsection (1)];
- [(f)] (e) To perform services for the community under the supervision of a governmental agency or benevolent or charitable organization or

other community service group or [under] appropriate [supervision, or to perform such services and to probation, as the court may direct,] supervisor, provided that the convicted person who performs such services shall not be deemed to be an employee for any purpose. [The extent of services required shall be stated in the judgment. The court shall not sentence the convicted person only to perform such services unless, having regard to the nature and circumstances of the crime and to the history and character of the defendant, it is of the opinion that the performance of such services alone suffices for the protection of the public.]

(2) The court shall not sentence a defendant to probation and imprisonment except as authorized by part II of this chapter.

(3) In addition to any disposition authorized in subsection (1) of this section, the court may sentence a person convicted of a misdemeanor or petty misdemeanor to a suspended sentence.

[(2)] (4) The court may [suspend the imposition of sentence on] sentence a person who has been convicted of a violation[, may sentence the person to pay a fine authorized by part III of this chapter, or may sentence the person to perform services for the community as authorized by subsection (1)(f) of this section.] to any disposition authorized in subsection (1) of this section except imprisonment.

[(3)] (5) The court shall sentence a corporation or unincorporated association which has been convicted of an offense in accordance with section 706-608.

[(4)] (6) This chapter does not deprive the court of any authority conferred by law to decree a forfeiture of property, suspend or cancel a license, remove a person from office, or impose any other civil penalty. Such a judgment or order may be included in the sentence.”

SECTION 15. Section 706-606, Hawaii Revised Statutes, is amended to read as follows:

“**§706-606** [Sentence for offense of murder. The court shall sentence a person who has been convicted of murder to an indeterminate term of imprisonment. In such cases the court shall impose the maximum length of imprisonment as follows:

- (a) Life imprisonment without possibility of parole in the murder of:
 - (i) A peace officer while in the performance of his duties, or
 - (ii) A person known by the defendant to be a witness in a murder prosecution, or
 - (iii) A person by a hired killer, in which event both the person hired and the person responsible for hiring the killer shall be punished under this subsection, or
 - (iv) A person while the defendant was imprisoned.

As part of such sentence the court shall order the director of the department of social services and housing and the Hawaii paroling authority to prepare an application for the governor to commute the sentence to life with parole at the end of twenty years of imprisonment.

(b) Life imprisonment with possibility of parole in all other cases. The minimum length of imprisonment shall be determined by the Hawaii paroling authority in accordance with section 706-669.] Factors to be considered in imposing a sentence. The court, in determining the particular sentence to be imposed, shall consider:

- (1) The nature and circumstances of the offense and the history and characteristics of the defendant;
- (2) The need for the sentence imposed:
 - (a) To reflect the seriousness of the offense, to promote respect for law, and to provide just punishment for the offense;
 - (b) To afford adequate deterrence to criminal conduct;
 - (c) To protect the public from further crimes of the defendant; and
 - (d) To provide the defendant with needed educational or vocational training, medical care, or other correctional treatment in the most effective manner;
- (3) The kinds of sentences available; and
- (4) The need to avoid unwarranted sentence disparities among defendants with similar records who have been found guilty of similar conduct.”

SECTION 16. Section 706-606.1, Hawaii Revised Statutes, is repealed.

SECTION 17. Section 706-606.5, Hawaii Revised Statutes, is amended to read as follows:

“§706-606.5 Sentencing of repeat offenders. (1) Notwithstanding section 706-669 and any other law to the contrary, any person convicted of any class A felony, any class B felony or any of the following class C felonies: section 707-703 relating to negligent homicide in the first degree; 707-711 relating to assault in the second degree; 707-713 relating to reckless endangering in the first degree; 707-716 relating to terroristic threatening in the first degree; 707-721 relating to unlawful imprisonment in the first degree; 707-732 relating to sexual assault in the third degree; 707-751 relating to promoting child abuse in the second degree; 707-766 relating to extortion in the second degree; 708-811 relating to burglary in the second degree; 708-821 relating to criminal property damage in the second degree; 708-831 relating to theft in the second degree; 708-852 relating to forgery in the second degree; 708-854 relating to criminal possession of a forgery device; 710-1031 relating to intimidation of a correctional worker; 710-1071 relating to intimidating a witness; 711-1103 relating to riot; 712-1203 relating to promoting prostitution in the second degree; 712-1221 relating to gambling in the first degree; 712-1224 relating to possession of gambling records in the first degree; 712-1243 relating to promoting a dangerous drug in the third degree; 712-1247 relating to promoting a detrimental drug in the first degree; 134-7 relating to ownership or possession of firearms or ammunition by persons convicted of certain crimes; 134-8 relating to ownership, etc., of prohibited weapons; 134-9 relating to permits to carry [under section 707-701 relating to murder, 707-710 relating to assault in the first degree; 707-720 relating to kidnapping, 707-724 relating to criminal coercion involving dangerous weapons, 707-730 relating to rape in the first degree, 707-733 relating to sodomy in the first degree, 707-768 relating to extortion involving dangerous weapons, 708-810 relating to burglary in the first degree, 708-840 relating to robbery in the first degree, 712-1241 relating to the promoting of a dangerous drug in the first degree, 712-1242 relating to the promoting of a dangerous drug in the second degree, or 712-1244 relating to the promoting of a harmful drug in the first degree, who has a prior conviction for any of the above enumerated offenses or of any one of those enumerated in subsection (2) in this or another jurisdiction, within the time of the maximum sentence of the prior conviction, shall be sentenced for each conviction after the first conviction to a mandatory minimum period of imprisonment without possibility of parole during such period as follows:

- (a) Second conviction-5 years;
- (b) Third conviction-10 years.

(2) Notwithstanding section 706-669 and any other law to the contrary, any person convicted under section 708-811 relating to burglary in the second degree; 708-831 relating to theft in the first degree; 134-7 relating to ownership or possession of firearms or ammunition by persons convicted of certain crimes; 134-8 relating to ownership, etc., of prohibited weapons; 134-9 relating to permits to carry; 707-702 relating to manslaughter; 707-703 relating to negligent homicide in the first degree; 707-711 relating to assault in the second degree; 707-713 relating to reckless endangering in the first degree; 707-716 relating to terroristic threatening in the first degree; 707-721 relating to unlawful imprisonment in the first degree; 707-731 relating to rape in the second degree; 707-732 relating to rape in the third degree; 707-734 relating to sodomy in the second degree; 707-735 relating to sodomy in the third degree; 707-736 relating to sexual abuse in first degree; 707-741 relating to incest; 707-750 relating to promoting child abuse in the first degree; 707-751 relating to promoting child abuse in the second degree; 707-765 relating to extortion in the first degree; 707-766 relating to extortion in the second degree; 708-820 relating to criminal property damage in the first degree; 708-841 relating to robbery in the second degree; 710-1020 relating to escape in the first degree; 710-1031 relating to intimidation of a correctional worker; 710-1071 relating to intimidating a witness; 710-1074 relating to intimidating a juror; or 712-1202 relating to promoting prostitution in the first degree], or who is convicted of attempting to commit any class A felony, any class B felony, or any of the class C felony offenses enumerated above and who has a prior conviction or prior convictions for [one or more offenses] a class A felony, a class B felony, or any of the class C felony offenses enumerated [in subsection (1) or this subsection in this or another jurisdiction, within the time of the maximum sentence of any prior conviction,] above, shall be sentenced to a mandatory minimum period of imprisonment without possibility of parole during such period as follows:

- (a) One prior conviction-3 years;
- (b) Two prior convictions-5 years.]
- (a) One prior felony conviction:
 - (i) Where the instant conviction is for a class A felony—six years, eight months;
 - (ii) Where the instant conviction is for a class B felony—three years, four months;
 - (iii) Where the instant conviction is for a class C felony offense enumerated above—one year, eight months;
- (b) Two prior felony convictions:
 - (i) Where the instant conviction is for a class A felony—thirteen years, four months;
 - (ii) Where the instant conviction is for a class B felony—six years, eight months;
 - (iii) Where the instant conviction is for a class C felony offense enumerated above—three years, four months;
- (c) Three or more prior felony convictions:
 - (i) Where the instant conviction is for a class A felony—twenty years;
 - (ii) Where the instant conviction is for a class B felony—ten years;
 - (iii) Where the instant conviction is for a class C felony offense enumerated above—five years.

(2) Except as in section (3), a person shall not be sentenced to a mandatory minimum period of imprisonment under this section unless the instant felony offense was committed during such period as follows:

- (a) Within twenty years after a prior felony conviction where the prior felony conviction was for a class A felony;
- (b) Within ten years after a prior felony conviction where the prior felony conviction was for a class B felony;
- (c) Within five years after a prior felony conviction where the prior felony conviction was for a class C felony offense enumerated above.

(3) If a person was sentenced for a prior felony conviction to a special term under section 706-667, then the person shall not be sentenced to a mandatory minimum period of imprisonment under this section unless the instant felony offense was committed during such period as follows:

- (a) Within eight years after a prior felony conviction where the prior felony conviction was for a class A felony;
- (b) Within five years after the prior felony conviction where the prior felony conviction was for a class B felony;
- (c) Within four years after the prior felony conviction where the prior felony conviction was for a class C felony offenses enumerated above.

[(3)] (4) The sentencing court may impose the above sentences consecutive to any [other] sentence [then or previously] imposed on the defendant [or] for a prior conviction, but such sentence shall be imposed concurrent to the sentence imposed for the instant conviction. The court may impose a lesser mandatory minimum [sentence] period of imprisonment without possibility of parole than that mandated by this section where the court finds that strong mitigating circumstances warrant such action. Strong mitigating circumstances shall include, but will not be limited to, the provisions of section 706-621. The court shall provide a written opinion [or] stating its reasons for imposing the lesser sentence.

For purposes of this section:

- (a) A prior felony conviction is a conviction for a felony offense which was committed after a previous felony conviction;
- (b) Convictions under two or more counts of an indictment or complaint shall be considered a single conviction without regard to when the convictions occur;
- (c) A prior conviction in this or another jurisdiction shall be deemed a felony conviction if it was punishable by a sentence of death or of imprisonment in excess of one year;
- (d) A conviction occurs on the date judgment is entered."

SECTION 18. Section 706-608, Hawaii Revised Statutes, is amended by amending subsection (1) to read as follows:

"(1) The court may [suspend the sentence of a corporation or an unincorporated association which has been convicted of an offense or may sentence it to pay a fine authorized by part III of this chapter.] sentence a corporation or an unincorporated association which has been convicted of an offense to be placed on probation as authorized by part II of this chapter or to be fined as authorized by part III of this chapter."

SECTION 19. Section 706-610, Hawaii Revised Statutes, is amended to read as follows:

“§706-610 Classes of felonies. (1) [Felonies] Apart from first and second degree murder and attempted first and second degree murder, felonies defined by this Code are classified, for the purpose of sentence, into three classes, as follows:

- (a) Class A felonies;
- (b) Class B felonies; and
- (c) Class C felonies.

A felony is a class A, class B, or class C felony when it is so designated by this Code. A crime declared to be a felony, without specification of class, is a class C felony.

(2) [Notwithstanding any other provision of law, a] A felony defined by any statute of this State other than this Code shall constitute for the purpose of sentence a class C felony[.], except if another provision of law specifically defines a felony to be of a specified class as defined by this Code, such felony shall be treated for the purpose of sentence as provided by this chapter for that class of felony.”

SECTION 20. Chapter 706, Hawaii Revised Statutes, is amended by amending the title of part II to read as follows:

“PART II. [SUSPENSION OF SENTENCE AND] PROBATION”

SECTION 21. Section 706-620, Hawaii Revised Statutes, is amended to read as follows:

“§706-620 [Sentence of imprisonment withheld unless imprisonment is necessary. The court shall deal with a person who has been convicted of a crime without imposing sentence of imprisonment unless, having regard to the nature and circumstances of the crime and the history, character and condition of the defendant, it is of the opinion that:

- (1) There is undue risk that during the period of a suspended sentence or probation the defendant will commit another crime; or
- (2) The defendant is in need of correctional treatment that can be provided most effectively by his commitment to an institution; or
- (3) A lesser sentence will depreciate the seriousness of the defendant’s crime.]

Authority to withhold sentence of imprisonment. A defendant who has been convicted of a crime may be sentenced to a term of probation unless:

- (1) The crime is first or second degree murder or attempted first or second degree murder;
- (2) The crime is a class A felony;
- (3) The defendant is a repeat offender under section 706-606.5; or
- (4) The defendant is a felony firearm offender as defined in section 706-660.1(b).”

SECTION 22. Section 706-621, Hawaii Revised Statutes, is amended to read as follows:

“§706-621 [Grounds favoring withholding sentence of imprisonment. The following grounds, while not controlling the discretion of the court, may be accorded weight in favor of withholding sentence of imprisonment:] Factors to be considered in imposing a term of probation. The court, in determining whether to impose a term of probation, shall consider:

- (1) The factors set forth in section 706-606 to the extent that they are applicable;

(2) The following factors to be accorded weight in favor of withholding a sentence of imprisonment:

- [(1)] (a) The defendant's criminal conduct neither caused nor threatened serious harm;
- [(2)] (b) The defendant acted under a strong provocation;
- [(3)] (c) There were substantial grounds tending to excuse or justify the defendant's criminal conduct, though failing to establish a defense;
- [(4)] (d) The victim of the defendant's criminal conduct induced or facilitated its commission;
- [(5)] (e) The defendant has no history of prior delinquency or criminal activity or has led a law-abiding life for a substantial period of time before the commission of the present crime;
- [(6)] (f) The defendant's criminal conduct was the result of circumstances unlikely to recur;
- [(7)] (g) The character and attitudes of the defendant indicate that he is unlikely to commit another crime;
- [(8)] (h) The defendant is particularly likely to respond affirmatively to a program of restitution or a probationary program or both;
- [(9)] (i) The imprisonment of the defendant would entail excessive hardship to himself or his dependents."

SECTION 23. Section 706-622, Hawaii Revised Statutes, is amended to read as follows:

"§706-622 [Criteria for placing defendant on] Requirement of probation[.]; exception. When a person who has been convicted of a [crime] felony is not sentenced to imprisonment, the court shall place him on probation [if he is in need of the supervision, guidance, assistance, or direction that the probation service can provide]. Nothing in this part shall prohibit the court from suspending any sentence imposed upon persons convicted of a crime other than a felony."

SECTION 24. Section 706-623, Hawaii Revised Statutes, is amended to read as follows:

"§706-623 [Period of suspension of sentence or] Terms of probation. When the court has [suspended sentence or has] sentenced a defendant to be placed on probation, the period of [the suspension or] probation shall be five years upon conviction of a felony, one year upon conviction of a misdemeanor, or six months upon conviction of a petty misdemeanor, unless the defendant is sooner discharged by order of the court. The court, on application of a probation officer or of the defendant, or on its own motion, may discharge the defendant at any time. Prior to granting early discharge, the court shall afford the prosecuting attorney an opportunity to be heard."

SECTION 25. Section 706-624, Hawaii Revised Statutes, is amended to read as follows:

"§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 sentences 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 refrain from entering specified geographical areas without the court's permission;
- (h) To have in his possession no firearms or other dangerous instruments unless granted written permission by the court;
- (i) 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;
- (j) 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;
- (k) To report as directed to the court or the probation officer and to permit the officer to visit his home;
- (l) To post a bond, with or without surety, conditioned on the performance of any of the foregoing obligations;
- (m) 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 or conscience.

(3) When the court sentences a person who has been convicted of a 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. When the court sentences a person who has been convicted of a felony to be placed on probation, it may require him to serve a term of imprisonment not exceeding one year 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.] (1) Mandatory conditions. The court shall provide, as an explicit condition of a sentence of probation:

- (a) That the defendant not commit another federal or state crime during the term of probation;
- (b) That the defendant report to a probation officer as directed by the court or the probation officer;
- (c) That the defendant remain within the jurisdiction of the court, unless granted permission to leave by the court or a probation officer;
- (d) That the defendant notify a probation officer prior to any change in address or employment;
- (e) That the defendant notify a probation officer promptly if arrested or questioned by a law enforcement officer; and
- (f) That the defendant permit a probation officer to visit the defendant at the defendant's home or elsewhere as specified by the court.

(2) Discretionary conditions. The court may provide, as further conditions of a sentence of probation, to the extent that such conditions are reasonably related to the factors set forth in section 706-606 and to the extent that such conditions involve only such deprivations of liberty or property as are reasonably necessary for the purposes indicated in section 706-606(2), that the defendant:

- (a) Serve a term of imprisonment not exceeding one year in felony cases, and not exceeding six months in misdemeanor cases;
- (b) Perform a specified number of hours of services to the community as described in section 706-605(1)(e);
- (c) Support the defendant's dependents and meet other family responsibilities;
- (d) Pay a fine imposed pursuant to section 706-605(1)(b);
- (e) Make restitution as specified in section 706-605(1)(d);
- (f) Work conscientiously at suitable employment or pursue conscientiously a course of study or vocational training that will equip the defendant for suitable employment;
- (g) Refrain from engaging in a specified occupation, business, or profession bearing a reasonably direct relationship to the conduct constituting the crime, or engage in such a specified occupation, business, or profession only to a stated degree or under stated circumstances;
- (h) Refrain from frequenting specified kinds of places or from associating unnecessarily with specified persons, including but not limited to, the victim of the crime, any witnesses, regardless of whether they actually testified in the prosecution, law enforcement officers, co-defendants, or other individuals with whom contact may adversely affect the rehabilitation or reformation of the person convicted;
- (i) Refrain from use of alcohol or any use of narcotic drugs or controlled substances without a prescription;
- (j) Refrain from possessing a firearm, destructive device, or other dangerous weapon;
- (k) Undergo available medical, psychiatric, or psychological treatment, including treatment for drug or alcohol dependency, and remain in a specified institution if required for that purpose;
- (l) Reside in a specified place or area, or refrain from residing in a specified place or area;
- (m) Submit to periodic urinalysis or other similar testing procedure;
- (n) Satisfy such other reasonable conditions as the court may impose;
- (o) To refrain from entering specified geographical areas without the court's permission.

(3) Written statement of conditions. The defendant shall be given a written copy of any requirements imposed pursuant to this section, stated with sufficient specificity to enable the defendant to guide the defendant's self accordingly."

SECTION 26. Section 706-624.5, Hawaii Revised Statutes, is amended by amending its title and subsection (1) to read as follows:

"[] §706-624.5[] Notice of [suspended sentence or] probation. (1) Whenever the court [suspends the sentence of] places a defendant convicted of an offense against the person as described in chapter 707, or of an attempt to commit such an offense[, or places such defendant] on probation without requiring the serving of a term of imprisonment, the court shall provide written

notice to each victim of such offense of the [suspension of sentence or] probation, [as the case may be,] whenever the victim has made a written request for such notice. Notice shall be given to the victim at the address given on the request for notice or such other address as may be provided to the court by the victim from time to time.”

SECTION 27. Section 706-625, Hawaii Revised Statutes, is amended to read as follows:

“§706-625 Revocation [of suspension of sentence or probation], modification of probation conditions [or imposition or further requirements]. (a) [During a period of probation or suspension of sentence, the] The court, on application of a probation officer, the prosecuting attorney, the defendant, or on its own motion, after a hearing, may revoke [the suspension of sentence or] probation, [modify the requirements imposed on the defendant, or impose further requirements authorized by section 706-624.] reduce or enlarge the conditions of a sentence of probation, pursuant to the provisions applicable to the initial setting of the conditions and the provisions of section 706-627.

(b) The prosecuting attorney, the defendant’s probation officer, and the defendant shall be notified by the movant in writing of the time, place, and date of any such hearing, and of the grounds upon which action under this section is proposed. The prosecuting attorney, the defendant’s probation officer, and the defendant may appear in the hearing to oppose or support the application, and may submit evidence for the court’s consideration. The defendant shall have the right to be represented by counsel. For purposes of this section the court shall not be bound by the Hawaii Rules of Evidence, except for the rules pertaining to privileges.

(c) The court shall revoke [the suspension of sentence or] probation if the defendant has inexcusably failed to comply with a substantial requirement imposed as a condition of the order or has been convicted of a felony. The court may revoke the suspension of sentence or probation if the defendant has been convicted of another crime other than a felony.

(d) The court may modify the requirements imposed on the defendant or impose further requirements, if it finds that such action will assist the defendant in leading a law-abiding life.

(e) When the court revokes [a suspension of sentence or] probation, it may impose on the defendant any sentence that might have been imposed originally for the crime of which he was convicted.”

SECTION 28. Section 706-626, Hawaii Revised Statutes, is amended to read as follows:

“§706-626 Summons or arrest of defendant [under suspended sentence or] on probation; commitment without bail. At any time before the discharge of the defendant or the termination of the period of probation [or suspension of sentence]:

- (1) The court may, in connection with the [suspension or] probation, summon the defendant to appear before it or may issue a warrant for his arrest;
- (2) A probation or peace officer, having probable cause to believe that the defendant has failed to comply with a requirement imposed as a condition of the order, may arrest him without a warrant;
- (3) The court, if there is probable cause to believe that the defendant has committed another crime or if he has been held to answer

therefor, may commit him without bail, pending a determination of the charge by the court having jurisdiction thereof.”

SECTION 29. Section 706-627, Hawaii Revised Statutes, is amended to read as follows:

“§706-627 Tolling of [suspension of sentence or] probation. (1) Upon the filing of a motion to revoke a probation [or suspension of sentence] or a motion to [increase the requirements] enlarge the conditions imposed thereby, the period of probation [or suspension of sentence] shall be tolled pending the hearing upon the motion and the decision of the court. The period of tolling shall be computed from the filing date of the motion through and including the filing date of the written decision of the court concerning the motion for purposes of computation of the remaining period of probation [or suspension of sentence], if any. In the event the court fails to file a written decision upon the motion, the period shall be computed by reference to the date the court makes a decision upon the motion in open court. During the period of tolling of the probation [or suspension of sentence], the defendant shall remain subject to all terms and conditions of the probation [or suspension of sentence] except as otherwise provided by this chapter.

(2) In the event the court, following hearing, refuses to revoke the probation [or suspension of sentence] or grant the requested [increases in requirements] enlargement of conditions thereof because the defendant’s failure to comply therewith was excusable, the defendant may be granted the period of tolling of the probation [or suspension of sentence] for purposes of computation of the remaining probation [or suspension of sentence], if any.”

SECTION 30. Section 706-629, Hawaii Revised Statutes, is amended to read as follows:

“§706-629 Calculation of multiple dispositions involving [suspension or] probation and imprisonment, or multiple terms of [suspension or] probation. (1) When the disposition of a defendant involves more than one crime [or a defendant, already under sentence or suspension of sentence, is convicted for another crime committed prior to the former disposition]:

- (a) The court shall not [sentence to probation a defendant who is under sentence of imprisonment with more than six months to run, or] impose a sentence of probation and a sentence of imprisonment except as authorized by section [706-624(3);] 706-624(2)(a); and
- (b) Multiple periods of [suspension or] probation shall run concurrently from the date of the first such disposition; and
- (c) When a sentence of imprisonment is imposed for an indeterminate term, the service of such sentence shall satisfy a suspended sentence on another count or a prior suspended sentence or a prior sentence to probation; and
- (d) When a sentence of imprisonment is imposed for a definite term, the period of a suspended sentence on another count or a prior suspended sentence or prior sentence to probation shall run during the period of such imprisonment].

(2) When a defendant, already under sentence, is convicted for another crime committed prior to the former disposition:

- (a) The court shall not sentence to probation a defendant who is under sentence of imprisonment with more than six months to run;
- (b) Multiple periods of probation shall run concurrently from the date of the first such disposition; and

(c) When a defendant, already under sentence of probation, is sentenced to imprisonment, the service of imprisonment shall not toll the prior sentence of probation.

[(2)] (3) When a defendant is convicted of a crime committed while [under suspension of sentence or] on probation and such [suspension or] probation is not revoked:

- (a) If the defendant is sentenced to imprisonment [for an indeterminate term], the service of such sentence shall [satisfy] not toll the prior [suspended sentence or] sentence [to] of probation; and
- [(b)] If the defendant is sentenced to imprisonment for a definite term, the period of the suspension or probation shall not run during the period of such imprisonment; and
- (c) (b) If [sentence is suspended or] the defendant is sentenced to probation, the period of such [suspension or] probation shall run concurrently with or consecutively to the remainder of the prior [periods,] period, as the court determines at the time of disposition."

SECTION 31. Section 706-630, Hawaii Revised Statutes, is amended to read as follows:

"§706-630 Discharge of defendant. Upon the termination of the period of probation [or suspension of sentence] or the earlier discharge of the defendant, the defendant shall be relieved of any obligations imposed by the order of the court and shall have satisfied the disposition of the court."

SECTION 32. Section 706-631, Hawaii Revised Statutes, is amended to read as follows:

"§706-631 Probation [or suspension of sentence] is a final judgment for other purposes. A judgment [suspending sentence or] sentencing a defendant to be placed on probation shall be deemed tentative, to the extent provided in this chapter, but for all other purposes shall constitute a final judgment."

SECTION 33. Section 706-640, Hawaii Revised Statutes, is amended to read as follows:

"§706-640 Authorized fines. A person who has been convicted of an offense may be sentenced to pay a fine not exceeding:

- (1) [\$10,000,] \$50,000, when the conviction is of a class A felony [or a class B felony];
- (2) [\$5,000,] \$25,000, when the conviction is of a class [C] B felony;
- (3) [\$1,000,] \$10,000, when the conviction is of a [misdemeanor,] class C felony;
- (4) [\$500,] \$2,000, when the conviction is of a [petty] misdemeanor [or a violation];
- (5) \$1,000, when the conviction is of a petty misdemeanor or a violation;
- [(5)] (6) Any higher amount equal to double the pecuniary gain derived from the offense by the defendant;
- [(6)] (7) Any higher or lower amount specifically authorized by statute."

SECTION 34. Section 706-641, Hawaii Revised Statutes, is amended as follows:

1. Subsection (1) is amended to read:

“(1) The court shall not sentence a defendant only to pay a fine, when any other disposition is authorized by law, [unless, having regard to the nature and circumstances of the crime and to the history and character of the defendant, it is of the opinion that the fine alone suffices for the protection of the public.] except in misdemeanor and petty misdemeanor cases.”

2. Subsection (3) is amended to read:

“(3) The court shall not sentence a defendant to pay a fine unless:

- (a) The defendant is or will be able to pay the fine; and
- (b) The fine will not prevent the defendant from making restitution [or reparation] to the victim of the offense.”

SECTION 35. Section 706-643, Hawaii Revised Statutes, is amended by amending subsection (1) to read as follows:

“(1) The defendant shall pay a fine or any installment thereof to the clerk of the sentencing court. In the event of default in payment, the clerk shall notify the prosecuting attorney[.] and, if the defendant is on probation, the probation officer.”

SECTION 36. Section 706-644, Hawaii Revised Statutes, is amended to read as follows:

“§706-644 Consequences of nonpayment; imprisonment for contumacious nonpayment; summary collection. (1) When a defendant sentenced to pay a fine or restitution defaults in the payment thereof or of any installment, the court, upon the motion of the prosecuting attorney or upon its own motion, may require him to show cause why his default should not be treated as contumacious and may issue a summons or a warrant of arrest for his appearance. Unless the defendant shows that his default was not attributable to an intentional refusal to obey the order of the court, or to a failure on his part to make a good faith effort to obtain the funds required for the payment, the court shall find that his default was contumacious and may order him committed until the fine, restitution, or a specified part thereof is paid.

(2) When a fine or restitution is imposed on a corporation or unincorporated association, it is the duty of the person or persons authorized to make disbursement from the assets of the corporation or association to pay it from those assets, and their failure so to do may be held contumacious unless they make the showing required in subsection (1).

(3) The term of imprisonment for nonpayment of fine or restitution shall be specified in the order of commitment, and shall not exceed one day for each [\\$5] \\$25 of the fine, thirty days if the fine was imposed upon conviction of a violation or a petty misdemeanor, or one year in any other case, whichever is the shorter period. A person committed for nonpayment of a fine or restitution shall be given credit toward payment for each day of imprisonment, at the rate of [\\$5] \\$25 per day.

(4) If it appears that the defendant’s default in the payment of a fine or restitution is not contumacious, the court may make an order allowing the defendant additional time for payment, reducing the amount thereof or of each installment, or revoking the fine or restitution or the unpaid portion thereof in whole or in part.

(5) Upon any contumacious default in the payment of a fine or restitution or any installment thereof, execution may be levied and such other measures may be taken for the collection of the fine, restitution, or the unpaid balance thereof as are authorized for the collection of an unpaid civil judgment entered against the defendant in an action on a debt. The levy of execution for the

collection of a fine or restitution shall not discharge a defendant committed to imprisonment for nonpayment of the fine until the amount of the fine or restitution has actually been collected or accounted for under subsection (3).”

SECTION 37. Section 706-645, Hawaii Revised Statutes, is amended to read as follows:

“§706-645 Revocation of fine[.] or restitution. (1) A defendant who has been sentenced to pay a fine or restitution and who is not in contumacious default in the payment thereof may at any time petition the court which sentenced him for a revocation of the fine or restitution or of any unpaid portion thereof.

(2) If it appears to the satisfaction of the court that the circumstances which warranted the imposition of the fine or restitution have changed, or that it would otherwise be unjust to require payment, the court may revoke the fine or restitution or the unpaid portion thereof in whole or in part. Prior to revocation, the court shall afford the prosecuting attorney an opportunity to be heard.”

SECTION 38. Section 706-660, Hawaii Revised Statutes, is amended to read as follows:

“§706-660 Sentence of imprisonment for class B and C felonies; ordinary terms. A person who has been convicted of a class B or class C felony may be sentenced to an indeterminate term of imprisonment except as provided for in section 706-660.1 relating to the use of firearms in certain felony offenses[.] and section 706-606.5 relating to repeat offenders. When ordering such a sentence, the court shall impose the maximum length of imprisonment which shall be as follows:

- (1) For a class B felony—10 years; and
- (2) For a class C felony—5 years.

The minimum length of imprisonment shall be determined by the Hawaii paroling authority in accordance with section 706-669.”

SECTION 39. Chapter 706, Hawaii Revised Statutes, is amended by adding a new section to be appropriately designated and to read as follows:

“§706- Terms of imprisonment for first and second degree murder and attempted first and second degree murder. (1) Persons convicted of first degree murder or first degree attempted murder shall be sentenced to life imprisonment without possibility of parole.

As part of such sentence the court shall order the director of the department of social services and housing and the Hawaii paroling authority to prepare an application for commutation of the sentence to life imprisonment with parole at the end of twenty years of imprisonment.

(2) Persons convicted of second degree murder and attempted second degree murder shall be sentenced to life imprisonment with possibility of parole. The minimum length of imprisonment shall be determined by the Hawaii paroling authority.”

SECTION 40. Chapter¹ 706-662, Hawaii Revised Statutes, is amended to read as follows:

“§706-662 Criteria for [sentence of] extended [term] terms of imprisonment [for felony]. [The court may sentence a person who has been convicted of a felony to an extended term of imprisonment if it finds one or more of the grounds specified in this section. The finding of the court shall be incorporated in the record.] A convicted defendant may be subject to an extended term of

imprisonment under section 706-661, if the convicted defendant satisfies one or more of the following definitions:

- (1) Persistent offender. The defendant is a persistent offender whose [commitment] imprisonment for an extended term is necessary for protection of the public. The court shall not make such a finding unless the defendant has previously been convicted of two felonies committed at different times when he was eighteen years of age or older.
- (2) Professional criminal. The defendant is a professional criminal whose [commitment] imprisonment for an extended term is necessary for protection of the public. The court shall not make such a finding unless:
 - (a) The circumstances of the crime show that the defendant has knowingly devoted himself to criminal activity as a major source of livelihood; or
 - (b) The defendant has substantial income or resources not explained to be derived from a source other than criminal activity.
- (3) Dangerous person. The defendant is a dangerous person whose [commitment] imprisonment for an extended term is necessary for protection of the public. The court shall not make such a finding unless the defendant has been subjected to a psychiatric examination resulting in the conclusion that his criminal conduct has been characterized by compulsive, aggressive behavior with heedless indifference to consequences, and that such condition makes him a serious danger to others.
- (4) Multiple offender. The defendant is a multiple offender whose criminality was so extensive that a sentence of imprisonment for an extended term is [warranted.] necessary for protection of the public. The court shall not make such a finding unless:
 - (a) The defendant is being sentenced for two or more felonies or is already under sentence of imprisonment for felony; or
 - (b) The maximum terms of imprisonment authorized for each of the defendant's crimes, if made to run consecutively would equal or exceed in length the maximum of the extended term imposed, or would equal or exceed forty years if the extended term imposed is for a class A felony.
- (5) Offender against elderly, handicapped, or minor under the age of eight. The defendant is an offender against the elderly, handicapped, or minor under the age of eight whose [commitment] imprisonment for an extended term is necessary for the protection of the public. The court shall not make such a finding unless:
 - (a) The defendant attempts or commits any of the following crimes: murder, a sexual offense which constitutes a felony under [part V of] chapter 707, robbery, felonious assault, burglary, and kidnapping; and
 - (b) The defendant, in the course of committing or attempting to commit the crime, inflicts serious or substantial bodily injury upon a person who is:
 - (i) Sixty years of age or older;
 - (ii) Blind, a paraplegic, or a quadriplegic; or
 - (iii) Eight years of age or younger; and

- (c) Such disability is known or reasonably should be known to the defendant.”

SECTION 41. Section 706-663, Hawaii Revised Statutes, is amended to read as follows:

“§706-663 Sentence of imprisonment for misdemeanor and petty misdemeanor. [A person who has been convicted of a misdemeanor or a petty misdemeanor may be sentenced to imprisonment for a definite term which shall be fixed by the court and shall not exceed one year in the case of a misdemeanor or thirty days in the case of a petty misdemeanor.] After consideration of the factors set forth in sections 706-606 and 706-621, the court may sentence a person who has been convicted of a misdemeanor or a petty misdemeanor to imprisonment for a definite term to be fixed by the court and not to exceed one year in the case of a misdemeanor or thirty days in the case of a petty misdemeanor.”

SECTION 42. Section 706-664, Hawaii Revised Statutes, is amended to read as follows:

“§706-664 Procedure [on] for imposing [sentence] extended terms of imprisonment [for an extended term]. Hearings to determine the grounds for imposing extended terms of imprisonment may be initiated by the prosecutor or by the court on its own motion. The court shall not impose [a sentence of imprisonment for] an extended term unless the ground therefor has been established at a hearing after the conviction of the defendant and on written notice to him of the ground proposed. Subject to the provisions of section 706-604, the defendant shall have the right to hear and controvert the evidence against him and to offer evidence upon the issue.”

SECTION 43. Section 706-665, Hawaii Revised Statutes, is amended to read as follows:

“§706-665 Former conviction in another jurisdiction. For purposes of [subsection (1) of section 706-662,] sections 706-606.5, 706-620, and 706-662(1), a conviction of the commission of a crime in another jurisdiction shall constitute a previous conviction. Such conviction shall be deemed to have been of a felony if sentence of death or of imprisonment in excess of one year was authorized under the law of such other jurisdiction. Such a conviction shall be graded, for purposes of section 706-620 by comparing the maximum imprisonment authorized under the law of such other jurisdiction with the maximum imprisonment authorized for the relevant grade of felony.”

SECTION 44. Section 706-667, Hawaii Revised Statutes, is amended by amending subsection (3) to read as follows:

“(3) Special term. A young adult defendant convicted of a felony may, in lieu of any other sentence of imprisonment authorized by this chapter, be sentenced to a special indeterminate term of imprisonment if the court is of the opinion that such special term is adequate for his correction and rehabilitation and will not jeopardize the protection of the public. When ordering a special indeterminate term of imprisonment, the court shall impose the maximum length of imprisonment which shall be eight years for a class A felony, five years for a class B felony, and four years for a class C felony. The minimum length of imprisonment shall be set by the Hawaii paroling authority in accordance with section 706-669. During this special indeterminate term, the young adult will be incarcerated separately from career criminals, when practicable.

This section shall not apply to the [offense] offenses of murder[.] or attempted murder.”

SECTION 45. Chapter 706, Hawaii Revised Statutes, is amended by adding a new section to be appropriately designated and to read as follows:

“§706- Multiple sentence of imprisonment. (1) If multiple terms of imprisonment are imposed on a defendant at the same time, or if a term of imprisonment is imposed on a defendant who is already subject to an unexpired term of imprisonment, the terms may run concurrently or consecutively. Multiple terms of imprisonment imposed at the same time run concurrently unless the court orders or the statute mandates that the terms run consecutively. Multiple terms of imprisonment imposed at different times run consecutively unless the court orders that the terms run concurrently.

(2) The court, in determining whether the terms imposed are to be ordered to run concurrently or consecutively, shall consider the factors set forth in section 706-606.”

SECTION 46. Section 706-668, Hawaii Revised Statutes, is repealed.

SECTION 47. Section 706-670, Hawaii Revised Statutes, is amended by amending subsection (2) to read as follows:

“(2) Parole conditions. The authority, as a condition of parole, may impose reasonable conditions on the prisoner as provided under section [706-624(2).] 706-624.”

SECTION 48. Section 707-700, Hawaii Revised Statutes, is amended to read as follows:

“§707-700 Definitions of terms in this chapter. In this chapter, unless a different meaning plainly is required:

[(1)] “Person” means a human being who has been born and is alive[.];

[(2)] “Bodily injury” means physical pain, illness, or any impairment of physical condition[.];

“Substantial bodily injury” means bodily injury which causes:

(1) A major avulsion, laceration, or penetration of the skin;

(2) A chemical, electrical, friction, or scalding burn of second degree severity;

(3) A bone fracture;

(4) A serious concussion; or

(5) A tearing, rupture, or corrosive damage to the esophagus, viscera, or other internal organs.

[(3)] “Serious bodily injury” means bodily injury which creates a substantial risk of death or which causes serious, permanent disfigurement, or protracted loss or impairment of the function of any bodily member or organ[.];

[(4)] “Dangerous instrument” means any firearm, whether loaded or not, and whether operable or not, or other weapon, device, instrument, material, or substance, whether animate or inanimate, which in the manner it is used or is intended to be used is known to be capable of producing death or serious bodily injury[.];

[(5)] “Restrain” means to restrict a person’s movement in such a manner as to interfere substantially with his liberty:

[(a)] (1) By means of force, threat, or deception; or

[(b)] (2) If the person is under the age of eighteen or incompetent, without the consent of the relative, person, or institution having lawful custody of him[.];

[(6)] “Relative” means parent, ancestor, brother, sister, uncle, aunt, or legal guardian[;].

[(7)] “Sexual intercourse” means sexual intercourse in its ordinary meaning or any intrusion or penetration, however slight, of any part of a person’s body, or of any object, into the genital opening of another person, but emission is not required;

[(8)] “Deviate sexual intercourse” means any act of sexual gratification[;

(a) Between persons not married to each other involving the sex organs of one and the mouth or anus of the other; or

(b) Between] between a person and an animal or a corpse, involving the sex organs of one and the mouth, anus, or sex organs of the other.

“Sexual penetration” means vaginal intercourse, anal intercourse, fellatio, cunnilingus, analingus, deviate sexual intercourse, or any intrusion of any part of a person’s body or of any object into the genital or anal opening of another person’s body; it occurs upon any penetration, however slight, but emission is not required. For purposes of this chapter, each act of sexual penetration shall constitute a separate offense.

[(9)] “Sexual contact” means any touching of the sexual or other intimate parts of a person not married to the actor[, done with the intent of gratifying the sexual desire of either party].

[(10)] “Married” includes persons legally married, and a male and female living together as [man] husband and wife regardless of their legal status, but does not include spouses living apart [under a judicial decree;].

[(11)] “Forcible” “Strong compulsion” means the use of or attempt to use one or more of the following to overcome a person:

[(a)] (1) A threat, express or implied, that places a person in fear of bodily injury to the individual or another person, or in fear that the person or another person will be kidnapped;

[(b)] (2) A dangerous instrument; or

[(c)] (3) Physical force.

“Compulsion” means absence of consent, or a threat, express or implied, that places a person in fear of public humiliation, property damage, or financial loss.

[(12)] “Mentally defective” means a person suffering from a disease, disorder, or defect which renders him incapable of appraising the nature of his conduct[;].

[(13)] “Mentally incapacitated” means a person rendered temporarily incapable of appraising or controlling his conduct owing to the influence of a substance administered to him without his consent[;].

[(14)] “Physically helpless” means a person who is unconscious or for any other reason physically unable to communicate unwillingness to an act.”

SECTION 49. Section 707-701, Hawaii Revised Statutes, is amended to read as follows:

“§707-701 [Murder. (1) Except as provided in section 707-702, a person commits the offense of murder if he intentionally or knowingly causes the death of another person.

(2) Murder is a class A felony for which the defendant shall be sentenced to imprisonment as provided in section 706-606.] **Murder in the first degree. (1) A person commits the offense of murder in the first degree if the person intentionally or knowingly causes the death of:**

(a) **More than one person in the same or separate incident;**

- (b) A peace officer, judge, or prosecutor arising out of the performance of official duties;
- (c) A person known by the defendant to be a witness in a criminal prosecution;
- (d) A person by a hired killer, in which event both the person hired and the person responsible for hiring the killer shall be punished under this section; or
- (e) A person while the defendant was imprisoned.

(2) Murder in the first degree is a felony for which the defendant shall be sentenced to imprisonment as provided in section 706- .”

SECTION 50. Chapter 707, Hawaii Revised Statutes, is amended by adding a new section to be appropriately designated and to read as follows:

“§707- Murder in the second degree. (1) Except as provided in section 707-701, a person commits the offense of murder in the second degree if the person intentionally or knowingly causes the death of another person.

(2) Murder in the second degree is a felony for which the defendant shall be sentenced to imprisonment as provided in section 706- .”

SECTION 51. Section 707-710, Hawaii Revised Statutes, is amended by amending subsection (1) to read as follows:

“(1) A person commits the offense of assault in the first degree if he intentionally or knowingly causes serious bodily injury to another person.”

SECTION 52. Section 707-711, Hawaii Revised Statutes, is amended by amending subsection (1) to read as follows:

- “(1) A person commits the offense of assault in the second degree if:
- (a) [He] The person intentionally or knowingly causes substantial bodily injury to another [person with a dangerous instrument];
 - (b) [He] The person recklessly causes serious bodily injury to another person [with a dangerous instrument; or];
 - (c) [He] The person intentionally or knowingly causes bodily injury to a correctional worker, as defined in section 710-1031(2), who is engaged in the performance of duty or who is within a correctional facility[.]; or
 - (d) The person intentionally or knowingly causes bodily injury with a dangerous instrument.”

SECTION 53. Section 707-720, Hawaii Revised Statutes, is amended to read as follows:

“§707-720 Kidnapping. (1) A person commits the offense of kidnapping if he intentionally or knowingly restrains another person with intent to:

- (a) Hold him for ransom or reward; [or]
- (b) Use him as a shield or hostage; [or]
- (c) Facilitate the commission of a felony or flight thereafter; [or]
- (d) Inflict bodily injury upon him or subject him to a sexual offense; [or]
- (e) Terrorize him or a third person; or
- (f) Interfere with the performance of any governmental or political function.

(2) Except as provided in subsection (3), kidnapping is a class A felony.

(3) In a prosecution for kidnapping, it is a defense which reduces the offense to a class B felony that the defendant voluntarily released the victim,

alive and not suffering from serious or substantial bodily injury, in a safe place prior to trial.”

SECTION 54. Section 707-721, Hawaii Revised Statutes, is amended by amending subsection (1) to read as follows:

“(1) A person commits the offense of unlawful imprisonment in the first degree if he knowingly restrains another person:

- (a) Under circumstances which expose the person to the risk of serious bodily injury; or
- (b) In a condition of involuntary servitude.”

SECTION 55. Section 707-726, Hawaii Revised Statutes, is amended to read as follows:

“**§707-726 Custodial interference in the first degree.** (1) A person commits the offense of custodial interference in the first degree if:

- (a) Being a relative of a person less than eighteen years old:
 - (i) [He knowingly takes or entices that person from any other person who has a right to custody pursuant to a court order, judgment, or decree; or
 - (ii) He] The person knowingly violates a court order issued pursuant to chapter 586[; and], or the person knowingly takes or entices the person from any other person who has a right to custody pursuant to a court order, judgment, or decree; and
 - (b) He] (ii) The person removes [himself] the person's self and the person less than eighteen years old from the State[.]; or
 - (c)¹ The person takes or entices another person less than eleven years old from that other person's lawful custodian, knowing that the person had no right to do so.
- (2) Custodial interference in the first degree is a class C felony.”

SECTION 56. Sections 707-730 to 707-738, Hawaii Revised Statutes, are repealed.

SECTION 57. Chapter 707, Hawaii Revised Statutes, is amended by adding five new sections to read as follows:

“**§707-730 Sexual assault in the first degree.** (1) A person commits the offense of sexual assault in the first degree if:

- (a) The person knowingly subjects another person to an act of sexual penetration by strong compulsion;
 - (b) The person knowingly subjects to sexual penetration another person who is less than fourteen years old.
- (2) Sexual assault in the first degree is a class A felony.

§**707-731 Sexual assault in the second degree.** (1) A person commits the offense of sexual assault in the second degree if:

- (a) The person knowingly subjects another person to an act of sexual penetration by compulsion;
 - (b) The person knowingly subjects to sexual penetration another person who is mentally defective, mentally incapacitated, or physically helpless; or
 - (c) The person, while employed in a state correctional facility, knowingly subjects to sexual penetration an imprisoned person.
- (2) Sexual assault in the second degree is a class B felony.

§707-732 Sexual assault in the third degree. (1) A person commits the offense of sexual assault in the third degree if:

- (a) The person recklessly subjects another person to an act of sexual penetration by compulsion;
 - (b) The person knowingly subjects to sexual contact another person who is less than fourteen years old or causes such a person to have sexual contact with the person;
 - (c) The person knowingly subjects to sexual contact another person who is mentally defective, mentally incapacitated, or physically helpless, or causes such a person to have sexual contact with the actor; or
 - (d) The person, while employed in a state correctional facility, knowingly subjects to sexual contact an imprisoned person or causes such person to have sexual contact with the actor.
- (2) Sexual assault in the third degree is a class C felony.

§707-733 Sexual assault in the fourth degree. (1) A person commits the offense of sexual assault in the fourth degree if:

- (a) The person knowingly subjects another person to sexual contact by compulsion or causes another person to have sexual contact with the actor by compulsion; or
 - (b) The person exposes the person's genitals to another person to whom the actor is not married under circumstances in which the actor's conduct is likely to place the other person in fear of bodily injury.
- (2) Sexual assault in the fourth degree is a misdemeanor.

§707-734 Sexual assault in the fifth degree. (1) A person commits the offense of sexual assault in the fifth degree if, the person intentionally exposes the person's genitals to a person to whom the person is not married under circumstances in which the person's conduct is likely to cause affront or alarm.

- (2) Sexual assault in the fifth degree is a petty misdemeanor."

SECTION 58. Section 707-750, Hawaii Revised Statutes, is amended by amending the definition of "sexual conduct" in subsection (2) to read as follows:

"“Sexual conduct” means acts of masturbation, homosexuality, lesbianism, bestiality, sexual [intercourse] penetration, deviate sexual intercourse, or sadomasochistic abuse.”

SECTION 59. Section 707-751, Hawaii Revised Statutes, is amended by amending the definition of "sexual conduct" in subsection (2) to read as follows:

"“Sexual conduct” means acts of masturbation, homosexuality, lesbianism, bestiality, sexual [intercourse] penetration, deviate sexual intercourse, or sadomasochistic abuse.”

SECTION 60. Section 708-800, Hawaii Revised Statutes, is amended to read as follows:

“§708-800 Definitions of terms in this chapter. In this chapter, unless a different meaning plainly is required, the following definitions apply.

“Apartment building” means any structure containing one or more dwelling units which is not a hotel or a single-family residence.

[(1)] “Building” includes any structure, and the term also includes any 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[;].

“Cardholder” means the person or organization named on the face of a credit card to whom or for whose benefit the credit card is issued by an issuer.

[(2)] “Control over the property” means the exercise of dominion over the property and includes, but is not limited to, taking, carrying away, or possessing the property, or selling, conveying, or transferring title to or an interest in the property[.].

“Credit card” means any instrument or device, whether known as a credit card, credit plate, or by any other name, issued with or without fee by an issuer for the use of the cardholder in obtaining money, goods, services, or anything else of value, on credit.

[(3)] “Dealer” means a person in the business of buying and selling goods[.].

[(4)] “Deception” occurs when a person knowingly:

[(a)] (1) Creates or confirms another’s impression which is false and which the defendant does not believe to be true; [or]

[(b)] (2) Fails to correct a false impression which he previously has created or confirmed; [or]

[(c)] (3) Prevents another from acquiring information pertinent to the disposition of the property involved; [or]

[(d)] (4) Sells or otherwise transfers or encumbers property, failing to disclose a lien, adverse claim, or other legal impediment to the enjoyment of the property, whether that impediment is or is not valid, or is or is not a matter of official record; or

[(e)] (5) Promises performance which he does not intend to perform or knows will not be performed, but a person’s intention not to perform a promise shall not be inferred from the fact alone that he did not subsequently perform the promise.

The term “deception” does not, however, include falsity as to matters having no pecuniary significance, or puffing by statements unlikely to deceive ordinary persons in the group addressed. “Puffing” means an exaggerated commendation of wares or services in communications addressed to the public or to a class or group.

[(5)] “Deprive” means:

[(a)] (1) To withhold property or cause it to be withheld from a person permanently or for so extended a period or under such circumstance that a significant portion of its economic value, or of the use and benefit thereof, is lost to him; or

[(b)] (2) To dispose of the property so as to make it unlikely that the owner will recover it; or

[(c)] (3) To retain the property with intent to restore it to the owner only if the owner purchases or leases it back, or pays a reward or other compensation for its return; or

[(d)] (4) To sell, give, pledge, or otherwise transfer any interest in the property; or

[(e)] (5) To subject the property to the claim of a person other than the owner.

[(6)] “Dwelling” means a building which is used or usually used by a person for lodging.

[(7)] “Enter or remain unlawfully.” A person “enters or remains unlawfully” in or upon premises when he is not licensed, invited, or otherwise privileged to do so. A person who, regardless of his intent, enters or remains in or upon premises which are at the time open to the public does so with license and privilege unless he defies a lawful order not to enter or remain, personally

communicated to him by the owner of the premises or some other authorized person. A license or privilege to enter or remain in a building which is only partly open to the public is not a license or privilege to enter or remain in that part of the building which is not open to the public. A person who enters or remains upon unimproved and apparently unused land, which is neither fenced nor otherwise enclosed in a manner designed to exclude intruders, does so with license and privilege unless notice against trespass is personally communicated to him by the owner of the land or some other authorized person, or unless notice is given by posting in a conspicuous manner.

[(8) [Deleted]]

“Expired credit card” means a credit card which is no longer valid because the term shown on the credit card has elapsed.

[(9)] “Financial institution” means a bank, trust company, insurance company, credit union, safety deposit company, savings and loan association, investment trust, or other organization held out to the public as a place of deposit of funds or medium of savings or collective investment.

[(10)] “Government” means the United States, or any state, county, municipality, or other political unit within territory belonging to the United States, or any department, agency, or subdivision of any of the foregoing, or any corporation or other association carrying out the functions of government, or any corporation or agency formed pursuant to interstate compact or international treaty. As used in this definition “state” includes any state, territory, or possession of the United States, the District of Columbia, and the Commonwealth of Puerto Rico.

“Hotel” means a structure in which all tenants are roomers or boarders.

[(11)] “Intent to defraud” means:

- (a) (1) An intent to use deception to injure another’s interest which has value; or
- (b) (2) Knowledge by the defendant that he is facilitating an injury to another’s interest which has value.

“Issuer” means the business organization or financial institution which issues a credit card or its agent.

“Master key” means a key which will operate two or more locks to different apartments, offices, hotel rooms, or motel rooms in a common physical location.

[(12)] “Obtain” means:

- (a) (1) When used in relation to property, to bring about a transfer of possession or other interest, whether to the obtainer or to another; and
- (b) (2) When used in relation to services, to secure the performance of services.

[(13)] “Owner” means a person, other than the defendant, who has possession of or any other interest in, the property involved, even though that possession or interest is unlawful; however, a secured party is not an owner in relation to a defendant who is a debtor with respect to property in which the secured party has only a security interest.

[(14)] “Premises” includes any building and any real property.

[(15)] “Property” means any money, personal property, real property, thing in action, evidence of debt or contract, or article of value of any kind. Commodities of a public utility nature such as gas, electricity, steam, and water constitute property, but the supplying of such a commodity to premises from an outside source by means of wires, pipes, conduits, or other equipment shall be deemed a rendition of a service rather than a sale or delivery of property.

[(16)] "Property of another" means property which any person, other than the defendant, has possession of or any other interest in, even though that possession or interest is unlawful; however, a security interest is not an interest in property, even if title is in the secured party pursuant to the security agreement.

[(17)] "Receiving" "Receives" or "receiving" includes but is not limited to acquiring possession, control, or title, and taking a security interest in the property.

"Revoked credit card" means a credit card which is no longer valid because permission to use the credit card has been suspended or terminated by the issuer.

[(18)] "Services" includes but is not limited to labor, professional services, transportation, telephone or other public services, accommodation in hotels, restaurants or elsewhere, admission to exhibitions, and the supplying of equipment for use.

[(19)] "Stolen" means obtained by theft or robbery.

[(20)] "Unauthorized control over property" means control over property of another which is not authorized by the owner.

[(21)] "Widely dangerous means" includes explosion, fire, flood, avalanche, collapse of building, poison gas, radioactive material, or any other material, substance, force, or means capable of causing potential widespread injury or damage.

[(22)] "Hotel" means a structure in which all tenants are roomers or boarders.

(23) "Apartment building" means any structure containing one or more dwelling units which is not a hotel or a single-family residence.

(24) "Master key" means a key which will operate two or more locks to different apartments, offices, hotel rooms or motel rooms in a common physical location.]"

SECTION 61. Chapter 708, Hawaii Revised Statutes, is amended by adding a new part to be designated and to read as follows:

"PART . CREDIT CARD OFFENSES

§708- Fraudulent use of a credit card. (1) A person commits the offense of fraudulent use of a credit card, if with intent to defraud the issuer, or another person or organization providing money, goods, services, or anything else of value, or any other person, the person:

- (a) Uses or attempts or conspires to use, for the purpose of obtaining money, goods, services, or anything else of value a credit card obtained or retained in violation of section 708- or a credit card which the person knows is forged, expired, or revoked;
- (b) Obtains or attempts or conspires to obtain money, goods, services, or anything else of value by representing without the consent of the cardholder that the person is the holder of a specified card or by representing that the person is the holder of a card and such card has not in fact been issued; or
- (c) Uses or attempts or conspires to use a credit card number without the consent of the cardholder for the purpose of obtaining money, goods, services, or anything else of value.

(2) Fraudulent use of a credit card is a class C felony if the value of all money, goods, services, and other things of value obtained or attempted to be obtained exceeds \$500 in any six-month period.

(3) Fraudulent use of a credit card is a misdemeanor, if the value of all money, goods, services, and other things of value obtained or attempted to be obtained does not exceed \$500 in any six-month period.

(4) Knowledge of revocation of a credit card shall be presumed to have been received by a cardholder four days after it has been mailed to the cardholder at the address set forth on the credit card or at the last known address by registered or certified mail, return receipt requested, and, if the address is more than five hundred miles from the place of mailing, by air mail. If the address is located outside the United States, Puerto Rico, the Virgin Islands, the Canal zone, and Canada, notice shall be presumed to have been received ten days after mailing by registered or certified mail.

§708- Making a false statement to procure issuance of a credit card.

(1) A person commits the offense of making a false statement to procure issuance of a credit card if the person makes or causes to be made, either directly or indirectly, any false statement in writing, knowing it to be false and with intent that it be relied on, respecting the person's identity or that of any other person, firm, or corporation, for the purpose of procuring the issuance of a credit card.

(2) Making a false statement to procure issuance of a credit card is a misdemeanor.

§708- Theft, forgery, etc., of credit cards. (1) A person who takes a credit card from the person, possession, custody, or control of another without the cardholder's consent or who, with knowledge that it has been so taken, receives the credit card with intent to use it or to sell it, or to transfer it to a person other than the issuer or the cardholder commits the offense of credit card theft. If a person has in the person's possession or under the person's control credit cards issued in the names of two or more other persons, which have been taken or obtained in violation of this subsection, it is prima facie evidence that the person knew that the credit cards had been taken or obtained without the cardholder's consent.

(2) A person who receives a credit card that the person knows to have been lost, mislaid, or delivered under a mistake as to the identity or address of the cardholder, and who retains possession with intent to use it or to sell it or to transfer it to a person other than the issuer or the cardholder commits the offense of credit card theft.

(3) A person, other than the issuer, who sells a credit card or a person who buys a credit card from a person other than the issuer commits the offense of credit card theft.

(4) A person who, with intent to defraud the issuer, a person or organization providing money, goods, services, or anything else of value, or any other person, obtains control over a credit card as security for a debt commits the offense of credit card theft.

(5) A person, other than the issuer, who during any twelve-month period, receives credit cards issued in the names of two or more persons which the person has reason to know were taken or retained under circumstances which constitute credit card theft or a violation of section 708- , commits the offense of credit card theft.

(6) A person who, with intent to defraud a purported issuer, a person or organization providing money, goods, services, or anything else of value, or any other person, falsely makes or falsely embosses a purported credit card or utters such a credit card, or possesses such a credit card with knowledge that the same has been falsely made or falsely embossed commits the offense of credit card

forgery. If a person other than the purported issuer possesses two or more credit cards which have been made or embossed in violation of this subsection, it is prima facie evidence that the person intended to defraud or that the person knew the credit cards had been so made or embossed. A person falsely makes a credit card when the person makes or draws, in whole or in part, a device or instrument which purports to be the credit card of a named issuer but which is not such a credit card because the issuer did not authorize the making or drawing, or alters a credit card which was validly issued. A person falsely embosses a credit card who, without authorization of the named issuer, completes a credit card by adding any of the matter, other than the signature of the cardholder, which an issuer requires to appear on the credit card before it can be used by a cardholder.

(7) A person other than the cardholder or a person authorized by the cardholder who, with intent to defraud the issuer, or a person or organization providing money, goods, services, or anything else of value, or any other person, signs a credit card, commits the offense of credit card forgery.

(8) Credit card theft is a class C felony.

(9) Credit card forgery is a class C felony.

§708- Credit card fraud by a provider of goods or services. (1) A person who is authorized by an issuer to furnish money, goods, services, or anything else of value upon presentation of a credit card by the cardholder, or any agent or employees of such person, who, with intent to defraud the issuer or cardholder, furnishes money, goods, services, or anything else of value upon presentation of a credit card obtained or retained in violation of section 708- or a credit card which the person knows is forged, expired, or revoked commits the offense of credit card fraud by a provider of goods or services.

(2) A person who is authorized by an issuer to furnish money, goods, services, or anything else of value upon presentation of a credit card by the cardholder, or any agent or employee of such person, who, with intent to defraud the issuer or the cardholder, fails to furnish money, goods, services, or anything else of value which the person represents in writing to the issuer that the person has furnished commits the offense of credit card fraud by a provider of goods or services.

(3) Credit card fraud by a provider of goods or services is a class C felony.

§708- Possession of unauthorized credit card machinery or incomplete cards. (1) A person other than the cardholder possessing an incomplete credit card, with intent to complete it without the consent of the issuer or a person possessing, with knowledge of its character, machinery, plates, or any other contrivance designed to reproduce instruments purporting to be the credit cards of the issuer who has not consented to the preparation of such credit cards, commits the offense of possession of unauthorized credit card machinery or incomplete cards.

A credit card is incomplete if part of the matter other than the signature of the cardholder, which an issuer requires to appear on the credit card, before it can be used by a cardholder, has not yet been stamped, embossed, imprinted, or written on it.

If a person other than the cardholder or issuer possesses two or more incomplete credit cards, it is prima facie evidence that the person intended to complete them without the consent of the owner.

(2) Possession of unauthorized credit card machinery or incomplete cards is a class C felony.

§708- Credit card lists prohibited; penalty. (1) It is unlawful for any person, business, corporation, partnership, or other agency to make available, lend, donate, or sell any list or portion of a list of any credit cardholders and their addresses and account numbers to any third party without the express written permission of the issuer and the cardholders; except that a credit card issuer may make a list of its cardholders, including names, addresses, and account numbers, available, without the permission of the cardholders, to a third party pursuant to a contract, if the contract contains language requiring the third party to bind through contract each of its subcontractors by including language prohibiting the divulging of any part of the list for any purpose by the subcontractors except to fulfill and service orders pursuant to the contract between the credit card issuer and the authorized third party.

Notwithstanding any contrary provision of this section, a "consumer reporting agency", as that term is defined by the Fair Credit Reporting Act, Public Law No. 91-508, may provide lists of credit account names, addresses, and account numbers to third parties pursuant to that Act. Nothing in this section shall make unlawful or otherwise prohibit the transmittal of any such information to or from a "consumer reporting agency", as that term is defined in the Fair Credit Reporting Act, or a "debt collector", as that term is defined in the Fair Debt Collection Practices Act, Public Law No. 95-109. Notwithstanding the provisions of this section, it is lawful for any corporation to make available, lend, donate, or sell any list or portion of a list of any credit cardholders and their addresses and account numbers to a subsidiary or the parent corporation of such corporation or to another subsidiary of the common parent corporation.

(2) Violation of this section is a misdemeanor.

§708- Defenses not available. In any prosecution for violation of this part, the prosecution is not required to establish and it is no defense:

- (1) That a person other than the defendant who violated this part has not been convicted, apprehended, or identified; or
- (2) That some of the acts constituting the offense did not occur in this State or were not a crime or element of a crime where they did occur."

SECTION 62. Section 708-822, Hawaii Revised Statutes, is amended to read as follows:

"§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.~~] \$100.
- (2) Criminal property damage in the third degree is a misdemeanor."

SECTION 63. Chapter 708, Hawaii Revised Statutes, is amended by adding a new section to be appropriately designated and to read as follows:

"§708- Theft in the first degree. (1) A person commits the offense of theft in the first degree if the person commits theft of property, the value of which exceeds \$20,000.

(2) Theft in the first degree is a class B felony."

SECTION 64. Section 708-831, Hawaii Revised Statutes, is amended to read as follows:

- “§708-831 Theft in the [first] second degree.** (1) A person commits the offense of theft in the [first] second degree if [he] the person commits theft:
- (a) By obtaining property from the person of another; [or]
 - (b) Of property or services the value of which exceeds [\$200; or] \$300;
 - (c) Of a firearm; [or]
 - (d) Of dynamite or other explosive; [or]
 - (e) By having in his possession a live animal or the carcass or meat, of the bovine,² , swine, or sheep species, while in or upon premises which he entered knowingly or remained unlawfully in or upon, and which are fenced or enclosed in a manner designed to exclude intruders or by having in his possession said live animal, carcass or meat in any other location.
- (2) Theft in the [first] second degree is a class C felony.”

SECTION 65. Section 708-832, Hawaii Revised Statutes, is amended to read as follows:

- “§708-832 Theft in the [second] third degree.** (1) A person commits the offense of theft in the [second] third degree if [he] the person commits theft:
- (a) Of property or services the value of which exceeds [\$50;] \$100; or
 - (b) Of gasoline, diesel fuel or other related petroleum products used as propellants of any value not exceeding \$200.
- (2) Theft in the [second] third degree is a misdemeanor.”

SECTION 66. Section 708-833, Hawaii Revised Statutes, is amended to read as follows:

- “§708-833 Theft in the [third] fourth degree.** (1) A person commits the offense of theft in the [third] fourth degree if [he] the person commits theft of property or services[,] of any value not in excess of \$100.
- (2) Theft in the [third] fourth degree is a petty misdemeanor.”

SECTION 67. Section 708-833.5, Hawaii Revised Statutes, is amended to read as follows:

“§708-833.5 Shoplifting. A person convicted of committing the offense of shoplifting as defined in section 708-830 shall be sentenced as follows:

- [(a)] (1) In cases involving property [or properties] the value or aggregate value of which exceeds [\$200;] \$300; as a class C felony, provided that the minimum fine shall be [the lesser of \$5,000 or] four times the value or aggregate value involved;
- [(b)] (2) In cases involving property [or properties] the value or aggregate value of which exceeds [\$50;] \$100; as a misdemeanor, provided that the minimum fine shall be three times the value or aggregate value involved;
- [(c)] (3) In cases involving property [or properties] the value or aggregate value of which is [\$50] \$100 or less: as a petty misdemeanor, provided that the minimum fine shall be twice the value or aggregate value involved;
- [(d)] (4) If a person has previously been convicted of committing the offense of shoplifting as defined in section 708-830, the minimum fine shall be doubled that specified in paragraphs [(a), (b), and (c)] (1), (2), and (3), respectively, as set forth above; provided, in the event the convicted person defaults in payment of any fine, and the default was not contumacious, the court may sentence the person to

[perform services for the] community services as authorized by section [706-605(1)(f)] 706-605(1)(e).”

SECTION 68. Section 708-840, Hawaii Revised Statutes, is amended to read as follows:

“§708-840 Robbery in the first degree. (1) A person commits the offense of robbery in the first degree if, in the course of committing theft:

- (a) He attempts to kill another, or intentionally inflicts or attempts to inflict serious bodily injury upon another; or
- (b) He is armed with a dangerous instrument and:
 - (i) He uses force against the person of anyone present with intent to overcome that person’s physical resistance or physical power of resistance; or
 - (ii) He threatens the imminent use of force against the person of anyone who is present with intent to compel acquiescence to the taking of or escaping with the property.

(2) As used in this section, “dangerous instrument” means any firearm, whether loaded or not, and whether operable or not, or other weapon, device, instrument, material, or substance, whether animate or inanimate, which in the manner it is used or threatened to be used is capable of producing death or serious bodily injury.

(3) Robbery in the first degree is a class A felony.”

SECTION 69. Section 708-841, Hawaii Revised Statutes, is amended to read as follows:

“§708-841 Robbery in the second degree. (1) A person commits the offense of robbery in the second degree if, in the course of committing theft:

- (a) He uses force against the person of anyone present with the intent to overcome that person’s physical resistance or physical power of resistance; [or]
- (b) He threatens the imminent use of force against the person of anyone who is present with intent to compel acquiescence to the taking of or escaping with the property; or
- (c) He recklessly inflicts serious bodily injury upon another.

(2) Robbery in the second degree is a class B felony.”

SECTION 70. Chapter 709, Hawaii Revised Statutes, is amended by adding a new section to be appropriately designated and to read as follows:

“§709- Endangering the welfare of a minor in the first degree. (1) Except as in subsection (2), a person commits the offense of endangering the welfare of a minor in the first degree if, having care or custody of a minor, the person intentionally or knowingly allows another person to inflict serious or substantial bodily injury on the minor.

(2) It shall be a defense to prosecution under section 709- (1) and 709-704(1)¹ if, at the time the person allowed another to inflict serious or substantial bodily injury on a minor, the person reasonably believed the person would incur serious or substantial bodily injury in acting to prevent the infliction of serious or substantial bodily injury on the minor.

(3) Endangering the welfare of a minor in the first degree is a class C felony.”

SECTION 71. Section 709-904, Hawaii Revised Statutes, is amended to read as follows:

“§709-904 Endangering the welfare of a minor in the second degree. (1) Except as provided in section 709- (2), a person commits the offense of endangering the welfare of a minor in the second degree if, having care or custody of a minor, the person recklessly allows another person to inflict serious or substantial bodily injury on the minor.

[1] (2) A person commits the offense of endangering the welfare of a minor [under eighteen years of age] in the second degree if, being a parent, guardian, or other person whether or not charged with the care or custody of [such] a minor, [he] the person knowingly endangers the minor’s physical or mental welfare by violating or interfering with any legal duty of care or protection owed such minor.

[2] (3)¹ Endangering the welfare of a minor is a misdemeanor.”

SECTION 72. Chapter 710, Hawaii Revised Statutes, is amended by adding a new section to be appropriately designated and to read as follows:

“§710- Compensation by an adult of juveniles for crimes; grade or class of offense increased. (1) A person other than a juvenile commits the offense of compensation of a juvenile for a crime if the person intentionally or knowingly compensates, offers to compensate, or agrees to compensate any juvenile for the commission of any criminal offense.

(2) Any person convicted of compensating, offering to compensate, or agreeing to compensate a juvenile for the commission of a:

(a) Petty misdemeanor shall be deemed guilty of a misdemeanor;

(b) Misdemeanor shall be deemed guilty of a class C felony;

(c) Class C felony shall be deemed guilty of a class B felony;

(d) Class B or class A felony shall be deemed guilty of a class A felony.

(3) It is not a defense to a prosecution under subsection (1) that the accused had no knowledge of the juvenile’s age. The intent is to impose absolute liability with respect to the element of the other person’s being less than eighteen years old.

(4) For the purposes of this section, the following terms have the following meanings:

“Compensate” means to confer any benefit or pecuniary benefit.

“Juvenile” means any person under eighteen years of age.”

SECTION 73. Section 712-1200, Hawaii Revised Statutes, is amended by amending subsection (2) to read as follows:

“(2) As used in subsection (1), “sexual conduct” means “sexual [intercourse,] penetration,” “deviate sexual intercourse,” or “sexual contact,” as those terms are defined in section 707-700.”

SECTION 74. Section 712-1200, Hawaii Revised Statutes, is amended by amending subsection (4) to read as follows:

“(4) Notwithstanding any other law to the contrary, a person convicted of committing the offense of prostitution shall be sentenced as follows:

(a) For the first offense, a fine of \$500 and the person may be sentenced to a term of imprisonment of not more than thirty days; provided, in the event the convicted person defaults in payment of the \$500 fine, and the default was not contumacious, the court may sentence the person to perform services for the community as authorized by section [706-605(1)(f).] 706-605(1).

- (b) For any subsequent offense, a fine of \$500 and a term of imprisonment of thirty days, without possibility of suspension of sentence or probation.”

SECTION 75. Section 712-1247, Hawaii Revised Statutes, is amended by amending subsection (1) to read as follows:

“(1) A person commits the offense of promoting a detrimental drug in the first degree if he knowingly:

- (a) Possesses four hundred or more capsules or tablets containing one or more of the Schedule V substances; [or]
 - (b) Possesses one or more preparations, compounds, mixtures, or substances of an aggregate weight of one ounce or more containing one or more of the Schedule V substances; [or]
 - (c) Distributes fifty or more capsules or tablets containing one or more of the Schedule V substances; [or]
 - (d) Distributes one or more preparations, compounds, mixtures, or substances of an aggregate weight of one-eighth ounce or more, containing one or more of the Schedule V substances; [or]
 - (e) Possesses one or more preparations, compounds, mixtures, or substances of an aggregate weight of two and two-tenths pounds or more, containing any marijuana; [or]
 - (f) Distributes one or more preparations, compounds, mixtures, or substances of an aggregate weight of two ounces or more, containing any marijuana; or
 - (g) Possesses, cultivates, or has under the person’s control twenty-five or more marijuana plants; or
- [(g)] (h) Distributes any marijuana or any Schedule V substance in any amount to a minor.”

SECTION 76. Chapter 712, Hawaii Revised Statutes, is amended by adding two¹ new sections to be appropriately designated and to read as follows:

“§712- Commercial promotion of marijuana. (1) A person commits the offense of commercial promotion of marijuana if the person knowingly:

- (a) Possesses marijuana having an aggregate weight of forty-four pounds or more;
- (b) Distributes marijuana having an aggregate weight of two and two-tenths pounds or more;
- (c) Possesses, cultivates, or has under the person’s control one hundred or more marijuana plants;
- (d) Cultivates on land owned by another person, including land owned by the government or other legal entity, twenty-five or more marijuana plants, unless the person has the express permission from the owner of the land to cultivate the marijuana or the person has a legal or an equitable ownership interest in the land or the person has a legal right to occupy the land; or
- (e) Uses, or causes to be used, any firearm or other weapon, device, instrument, material, or substance, whether animate or inanimate, which in the manner used is capable of causing death or serious bodily injury, substantial bodily injury, or other bodily injury as defined in chapter 707 in order to prevent the theft, removal, search and seizure, or destruction of marijuana.

(2) Commercial promotion in the second degree is a class B felony.”

SECTION 77. Chapter 851, Hawaii Revised Statutes, is repealed.

SECTION 78. This Act does not affect rights and duties that matured, penalties that were incurred and proceedings that were begun, before its effective date.

SECTION 79. Statutory material to be repealed is bracketed. New statutory material is underscored.³

SECTION 80. This Act shall take effect on January 1, 1987.

(Approved June 6, 1986.)

Notes

1. So in original.
2. Prior to amendment "equine" appeared here.
3. Edited pursuant to HRS §23G-16.5.