

ACT 176

S.B. NO. 797

A Bill for an Act Relating to the Penal Code.

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

SECTION 1. Section 707-741, Hawaii Revised Statutes, is amended to read as follows:

**“§707-741 Incest.** (1) A person commits the offense of incest if he commits an act of sexual [intercourse] penetration with another who is within the degree<sup>1</sup> of consanguinity or affinity within which marriage is prohibited.

(2) Incest is a class C felony.”

SECTION 2. Section 708-831, Hawaii Revised Statutes, is amended by amending subsection (1) to read as follows:

“(1) A person commits the offense of theft in the second degree if the person commits theft:

- (a) By obtaining property from the person of another;
- (b) Of property or services the value of which exceeds \$300;
- (c) Of a firearm;
- (d) Of dynamite or other explosive;
- (e) By having in [his] the person’s possession a live animal or the carcass or meat, of the bovine, equine, swine, or sheep species, while in or upon premises which [he] the person 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] the person’s possession [said] such live animal, carcass, or meat in any other location.”

SECTION 3. Section 710-1077, Hawaii Revised Statutes, is amended by amending subsection (1) to read as follows:

- “(1) A person commits the offense of criminal contempt of court if:
- (a) [He] The person recklessly engages in disorderly or contemptuous behavior, committed during the sitting of a court in its immediate view and presence, and directly tending to interrupt its proceedings or impair the respect due to its authority; [or]
  - (b) [He] The person creates a breach of peace or a disturbance with intent to interrupt a court’s proceedings; [or]
  - (c) As an attorney, clerk, or other officer of the court, [he] the person knowingly fails to perform or violates a duty of [his] the person’s

office, or knowingly disobeys a lawful directive or order of a court; [or]

- (d) [He] The person knowingly publishes a false report of a court's proceedings; [or]
- (e) Knowing that [he] the person is not authorized to practice law, [he] the person represents [himself] the person's self to be an attorney and acts as such in a court proceeding;
- (f) [He] The person intentionally records or attempts to record the deliberation of a jury; [or]
- (g) [He intentionally] The person knowingly disobeys or resists the process, injunction, or other mandate of a court; [or]
- (h) [He] The person intentionally refuses to be qualified as a witness in any court or, after being qualified, to answer any proper interrogatory without a privilege to refuse to answer; [or]
- (i) Being a juror, [he] the person intentionally, without permission of the court, fails to attend a trial or official proceeding to which [he] the person has been<sup>1</sup> chosen to serve; or
- (j) [He] The person is in violation or disobedience of any injunction or order expressly provided for in part V of chapter 712."

SECTION 4. Section 711-1100, Hawaii Revised Statutes, is amended to read as follows:

**"§711-1100 Definitions of terms in this chapter. In this chapter, unless a different meaning plainly is required:**

"Animal" includes every living creature, except a human being[;].

"Cruelty", "torture" or "torment" includes every act, omission, or neglect whereby unjustifiable physical pain, suffering, or death is caused or permitted[;].

"Obstructs" means renders impassable without unreasonable inconvenience or hazard[;].

"Private place" means a place where one may reasonably expect to be safe from casual or hostile intrusion or surveillance, but does not include a place to which the public or a substantial group thereof has access[;].

"Public" means affecting or likely to affect a substantial number of persons[;].

"Public place" means a place to which the public or a substantial group of persons has access and includes highways, transportation facilities, schools, places of amusement or business, parks, playgrounds, prisons, and hallways, lobbies, and other portions of apartment houses and hotels not constituting rooms or apartments designed for actual residence."

SECTION 5. Section 712-1213, Hawaii Revised Statutes, is amended to read as follows:

**"§712-1213 Displaying indecent material [or words]; prima facie evidence.** The fact that a person engaged in the conduct specified by [sections] section 712-1211 [or 712-1212] is prima facie evidence that [he] the person engaged in that conduct with knowledge of or in reckless disregard of the character, content, or connotation of the material [or word] which is displayed."

SECTION 6. Section 712-1240, Hawaii Revised Statutes, is amended by amending the definition of "dosage unit" to read:

**"Dosage unit"** for purposes of section 712-1241 and section 712-1242 means an entity designed and intended for singular consumption or administration."

SECTION 7. Section 712-1242, Hawaii Revised Statutes, is amended by amending subsection (1) to read as follows:

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

- (a) Possesses fifty or more capsules, tablets, ampules, dosage unit, or syrettes, containing one or more dangerous drugs; or
- (b) Possesses one or more preparations, compounds, mixtures, or substances of an aggregate weight or:<sup>1</sup>
  - (i) One-eighth ounce or more, containing heroin, morphine, or cocaine or any of their respective salts; or
  - (ii) One-half ounce or more, containing any dangerous drug; or
- (c) Distributes any dangerous drug in any amount.”

SECTION 8. Section 712-1249.5, Hawaii Revised Statutes, is amended to read as follows:

“§712-1249.5<sup>1</sup> **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] of marijuana is a class B felony.”

SECTION 9. Section 712-1253, Hawaii Revised Statutes, is amended to read as follows:

“§712-1253 **Penalties under other laws.** Any penalty imposed for violation of this [part] chapter or chapter 329 is in addition to, and not in lieu of, any civil or administrative penalty or sanction otherwise authorized by law.”

SECTION 10. Section 712-1255, Hawaii Revised Statutes, is amended to read as follows:

1. By amending subsection (1) to read:

“(1) Whenever any person who has not previously been convicted of any offense under this [part of] chapter or chapter 329 or under any statute of the United States or of any state relating to a dangerous drug, harmful drug, detrimental drug, or an intoxicating compound, pleads guilty to or is found

guilty of promoting a dangerous drug, harmful drug, detrimental drug, or an intoxicating compound under [sections] section 712-1243, 712-1245, 712-1246, 712-1248, 712-1249, or 712-1250, the court, without entering a judgment of guilt and with the consent of the accused, may defer further proceedings and place him on probation upon terms and conditions. Upon violation of a term or condition, the court may enter an adjudication of guilt and proceed as otherwise provided.”

2. By amending subsection (5) to read:

“(5) After conviction, for any offense under this [part] chapter or chapter 329, but prior to sentencing, the court shall be advised by the prosecutor whether the conviction is defendant’s first or a subsequent offense. If it is not a first offense, the prosecutor shall file an information setting forth the prior convictions. The defendant shall have the opportunity in open court to affirm or deny that he is identical with the person previously convicted. If he denies the identity, sentence shall be postponed for such time as to permit the trial, before a jury if the defendant has a right to trial by jury and demands a jury, on the sole issue of the defendant’s identity with the person previously convicted.”

SECTION 11. Statutory material to be repealed is bracketed. New statutory material is underscored.

SECTION 12. This Act shall take effect upon its approval; provided that this Act shall not affect any rights or duties that matured, penalties that were incurred, or proceedings that were begun before its effective date.

(Approved June 6, 1987.)

**Note**

1. So in original.