

**ACT 231**

H.B. NO. 2561

A Bill for an Act Relating to the Administration of Justice.

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

**PART I**

SECTION 1. The legislature finds that house concurrent resolution no. 155, S.D. 1, (2015), requested the judicial council to appoint a committee

to review and recommend revisions to the Hawaii penal code to help ensure that grades of offenses and punishment are fair and proportionate to the crime committed, with particular attention paid to provisions that base culpability on dollar amounts. The committee was also asked to consider revisions that are cost-effective in deterring crime, reducing recidivism, and providing restitution to victims in a manner that provides equal justice and punishment, regardless of socioeconomic class or ethnicity.

Accordingly, the judicial council convened a penal code review committee comprising twenty-nine members, including judges from appellate, circuit, and district courts; the chair of the senate committee on judiciary and labor; the chair of the house judiciary committee; the attorney general; the director of public safety; the prosecuting attorneys for the counties of Hawaii, Kauai, and Maui; a representative of the prosecuting attorney for the city and county of Honolulu; a representative of the office of the public defender; representatives from the Honolulu police department; a representative of the office of Hawaiian affairs; a member of the judicial council; representatives of the criminal defense bar; crime victim advocates; and community advocates. Five subcommittees were formed, and each subcommittee convened numerous times to consider and prepare proposed revisions to designated parts of the penal code and to related statutes outside the penal code, for submission to the entire committee. The penal code review committee met in plenary session seven times between June 19 and December 18, 2015, and recommended the legislation proposed by this Act.

The purpose of this Act is to amend various chapters of the Hawaii penal code, and related statutes outside the penal code, pursuant to the recommendations of the penal code review committee.

## PART II

SECTION 2. The purpose of this part is to amend chapter 704, Hawaii Revised Statutes, regarding penal responsibility and fitness to proceed, to:

- (1) Limit the period of conditional release of defendants acquitted by reason of physical or mental disease, disorder, or defect in non-felony cases to no more than one year because that is the longest term of incarceration that may be imposed upon a conviction in those cases;
- (2) Require that examination reports regarding a defendant's fitness to proceed to trial be provided to the director of health;
- (3) Clarify that a defendant's right to bail and proceedings under chapter 804, Hawaii Revised Statutes, are not suspended when a court suspends pretrial proceedings due to questions about the defendant's physical or mental capacity;
- (4) Provide courts with discretion to decide whether records of a forensic examination shall be provided to the prosecution and defense in hard copy or digital format;
- (5) Permit the defendant to be examined while in custody or on release;
- (6) Provide courts with discretion to decide whether a forensic examination is necessary when a defendant seeks only to modify conditions of release; and to order temporary hospitalization without revocation of a defendant's conditional release; and
- (7) Add references to appropriate statutory authority for involuntary hospitalization and assisted community treatment criteria.

This part also seeks to improve the timeliness and efficiency of forensic examinations. Because the department of health presently lacks the personnel to participate in all forensic examination panels, this part temporarily amends

section 704-404(2), Hawaii Revised Statutes, to repeal the requirement that one member of the panels be appointed from within the department. Mandatory participation in forensic examinations will be restored in two years, which will give the department time to address its personnel shortages.

SECTION 3. Chapter 704, Hawaii Revised Statutes, is amended by adding two new sections to be appropriately designated and to read as follows:

**“§704- Conditional release; duration limited in nonfelony cases.** For any defendant granted conditional release in a nonfelony case pursuant to section 704-411(1)(b), 704-412, 704-414, or 704-415, the period of conditional release shall not exceed one year.

**§704- Examination reports; provided to director of health.** Copies of all examination reports made pursuant to sections 704-404, 704-406, 704-411, and 704-414 shall be provided to the director of health.”

SECTION 4. Section 704-404, Hawaii Revised Statutes, is amended as follows:

1. By amending subsections (1) and (2) to read:

“(1) Whenever the defendant has filed a notice of intention to rely on the defense of physical or mental disease, disorder, or defect excluding responsibility, or there is reason to doubt the defendant’s fitness to proceed, or reason to believe that the physical or mental disease, disorder, or defect of the defendant will or has become an issue in the case, the court may immediately suspend all further proceedings in the prosecution~~[-]~~; provided that for any defendant not subject to an order of commitment to a hospital for the purpose of the examination, neither the right to bail nor proceedings pursuant to chapter 804 shall be suspended. If a trial jury has been empanelled, it shall be discharged or retained at the discretion of the court. The discharge of the trial jury shall not be a bar to further prosecution.

(2) Upon suspension of further proceedings in the prosecution, the court shall appoint three qualified examiners in felony cases, and one qualified examiner in nonfelony cases, to examine and report upon the physical and mental condition of the defendant. In felony cases, the court shall appoint at least one psychiatrist and at least one licensed psychologist. The third member may be a psychiatrist, licensed psychologist, or qualified physician. One of the three shall be a psychiatrist or licensed psychologist designated by the director of health ~~[from within the department of health]~~. In nonfelony cases, the court may appoint either a psychiatrist or a licensed psychologist. All examiners shall be appointed from a list of certified examiners as determined by the department of health. The court, in appropriate circumstances, may appoint an additional examiner or examiners. The examination may be conducted ~~[on an out-patient basis]~~ while the defendant is in custody or on release or, in the court’s discretion, when necessary the court may order the defendant to be committed to a hospital or other suitable facility for the purpose of the examination for a period not exceeding thirty days, or ~~[such]~~ a longer period as the court determines to be necessary for the purpose. The court may direct that one or more qualified physicians or psychologists retained by the defendant be permitted to witness the examination. As used in this section, the term “licensed psychologist” includes psychologists exempted from licensure by section 465-3(a)(3).”

2. By amending subsection (8) to read:

“(8) The court shall obtain all existing medical, mental health, social, police, and juvenile records, including those expunged, and other pertinent

records in the custody of public agencies, notwithstanding any other [statutes,] statute, and make [such] the records available for inspection by the examiners[-] in hard copy or digital format. The court may order that the records so obtained be made available to the prosecuting attorney and counsel for the defendant in either format, subject to conditions the court determines appropriate; provided that juvenile records shall not be made available unless constitutionally required. If, pursuant to this section, the court orders the defendant committed to a hospital or other suitable facility under the control of the director of health, then the county police departments shall provide to the director of health and the defendant copies of all police reports from cases filed against the defendant [which] that have been adjudicated by the acceptance of a plea of guilty or no contest, a finding of guilt, acquittal, acquittal pursuant to section 704-400, or by the entry of plea of guilty or no contest made pursuant to chapter 853[-, so long as]; provided that the disclosure to the director of health and the defendant does not frustrate a legitimate function of the county police departments, with the exception of expunged records, records of or pertaining to any adjudication or disposition rendered in the case of a juvenile, or records containing data from the United States National Crime Information Center. The county police departments shall segregate or sanitize from the police reports information that would result in the likelihood or actual identification of individuals who furnished information in connection with its investigation, or who were of investigatory interest. Records shall not be re-disclosed except to the extent permitted by law.”

SECTION 5. Section 704-404, Hawaii Revised Statutes, is amended by amending subsection (2) to read as follows:

“(2) Upon suspension of further proceedings in the prosecution, the court shall appoint three qualified examiners in felony cases, and one qualified examiner in nonfelony cases, to examine and report upon the physical and mental condition of the defendant. In felony cases, the court shall appoint at least one psychiatrist and at least one licensed psychologist. The third member may be a psychiatrist, licensed psychologist, or qualified physician. One of the three shall be a psychiatrist or licensed psychologist designated by the director of health[-] from within the department of health. In nonfelony cases, the court may appoint either a psychiatrist or a licensed psychologist. All examiners shall be appointed from a list of certified examiners as determined by the department of health. The court, in appropriate circumstances, may appoint an additional examiner or examiners. The examination may be conducted while the defendant is in custody or on release or, in the court’s discretion, when necessary the court may order the defendant to be committed to a hospital or other suitable facility for the purpose of the examination for a period not exceeding thirty days, or a longer period as the court determines to be necessary for the purpose. The court may direct that one or more qualified physicians or psychologists retained by the defendant be permitted to witness the examination. As used in this section, the term “licensed psychologist” includes psychologists exempted from licensure by section 465-3(a)(3).”

SECTION 6. 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 the defendant shall be suspended, except as provided in section 704-407, and the court shall commit the defendant to the custody of the director of health to be

placed in an appropriate institution for detention, care, and treatment; provided that the commitment shall be limited in certain cases as follows:

- (a) When the defendant is charged with a petty misdemeanor not involving violence or attempted violence, the commitment shall be limited to no longer than sixty days from the date the court determines the defendant lacks fitness to proceed; and
- (b) When the defendant is charged with a misdemeanor not involving violence or attempted violence, the commitment shall be limited to no longer than one hundred twenty days from the date the court determines the defendant lacks fitness to proceed.

If the court is satisfied that the defendant may be released on conditions without danger to the defendant or to the person or property of others, the court shall order the defendant's release, which shall continue at the discretion of the court, on conditions the court determines necessary; provided that the release on conditions of a defendant charged with a petty misdemeanor not involving violence or attempted violence shall continue for no longer than sixty days, and the release on conditions of a defendant charged with a misdemeanor not involving violence or attempted violence shall continue for no longer than one hundred twenty days. A copy of ~~[the report]~~ all reports filed pursuant to section 704-404 shall be attached to the order of commitment or order of release on conditions~~[-]~~ that is provided to the department of health. When the defendant is committed to the custody of the director of health for detention, care, and treatment, the county police departments shall provide to the director of health and the defendant copies of all police reports from cases filed against the defendant that have been adjudicated by the acceptance of a plea of guilty or nolo contendere, a finding of guilt, acquittal, acquittal pursuant to section 704-400, or by the entry of a plea of guilty or nolo contendere made pursuant to chapter 853~~[-so-long as]~~; provided that the disclosure to the director of health and the defendant does not frustrate a legitimate function of the county police departments; provided further that expunged records, records of or pertaining to any adjudication or disposition rendered in the case of a juvenile, or records containing data from the United States National Crime Information Center shall not be provided. The county police departments shall segregate or sanitize from the police reports information that would result in the ~~[likely]~~ or actual identification of individuals who furnished information in connection with the investigation or who were of investigatory interest. Records shall not be re-disclosed except to the extent permitted by law.

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

~~[(3)]~~ 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 release on conditions of the defendant that it would be unjust to resume the proceeding, the court may dismiss the charge and:

- (a) Order the defendant to be discharged;
- (b) Subject to ~~[the law governing the involuntary civil commitment of persons affected by physical or mental disease, disorder, or defect,]~~ section 334-60.2 regarding involuntary hospitalization criteria, or-

der 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

- (c) Subject to ~~[the law governing involuntary outpatient treatment,]~~ section 334-121 regarding assisted community treatment criteria, order the defendant to be released on conditions the court determines necessary.

~~[(4)]~~ If a defendant committed to the custody of the director of health for a limited period pursuant to subsection (1) is not found fit to proceed prior to the expiration of the commitment, the charge for which the defendant was committed for a limited period shall be dismissed. Upon dismissal of the charge, the defendant shall be released from custody unless the defendant is subject to prosecution for other charges ~~[, in which case, unless the defendant is subject to the law governing involuntary civil commitment,]~~ or subject to section 334-60.2 regarding involuntary hospitalization criteria, in which case the court shall order the defendant's commitment to the custody of the director of health to be placed in an appropriate institution for detention, care, and treatment. Within a reasonable time following any other commitment under subsection (1), the director of health shall report to the court on whether the defendant presents a substantial likelihood of becoming fit to proceed in the future. The court, in addition, may appoint a panel of three qualified examiners in felony cases or one qualified examiner in nonfelony cases to make a report. If, following ~~[a]~~ the report, the court determines that the defendant probably will remain unfit to proceed, the court may dismiss the charge and:

- (a) Release the defendant; or  
 (b) Subject to ~~[the law governing involuntary civil commitment,]~~ section 334-60.2 regarding involuntary hospitalization criteria, 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.

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

- (a) Release the defendant; or  
 (b) Subject to ~~[the law governing involuntary civil commitment,]~~ section 334-60.2 regarding involuntary hospitalization criteria, 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.”

SECTION 7. Section 704-407, Hawaii Revised Statutes, is amended by amending subsection (3) to read as follows:

“(3) After the hearing, the court shall rule on any legal objection raised by the application and, in an appropriate case, may quash the indictment or other charge, find it to be defective or insufficient, or otherwise terminate the proceedings on the law. ~~In any such case, unless~~ Unless all defects in the proceedings are promptly cured, the court shall terminate the commitment or release ordered under section 704-406 and:

- (a) Order the defendant to be discharged;
- (b) Subject to ~~[the law governing involuntary civil commitment of persons affected by a physical or mental disease, disorder, or defect,]~~ section 334-60.2 regarding involuntary hospitalization criteria, 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
- (c) Subject to ~~[the law governing involuntary outpatient treatment,]~~ section 334-121 regarding assisted community treatment criteria, order the defendant to be released on ~~[such]~~ conditions as the court deems necessary.”

SECTION 8. Section 704-411, Hawaii Revised Statutes, is amended to read as follows:

1. By amending subsection (1) to read:

“(1) When a defendant is acquitted on the ground of physical or mental disease, disorder, or defect excluding responsibility, the court, on the basis of the report made pursuant to section 704-404, if uncontested, or the medical or psychological evidence given at the trial or at a separate hearing, shall order that:

- (a) The defendant shall be committed to the custody of the director of health to be placed in an appropriate institution for custody, care, and treatment if the court finds that the defendant:
  - (i) Is affected by a physical or mental disease, disorder, or defect;
  - (ii) Presents a risk of danger to self or others; and
  - (iii) Is not a proper subject for conditional release;
 provided that the director of health shall place defendants charged with misdemeanors or felonies not involving violence or attempted violence in the least restrictive environment appropriate in light of the defendant’s treatment needs and the need to prevent harm to the person confined and others. The county police departments shall provide to the director of health and the defendant copies of all police reports from cases filed against the defendant that have been adjudicated by the acceptance of a plea of guilty or nolo contendere, a finding of guilt, acquittal, acquittal pursuant to section 704-400, or by the entry of a plea of guilty or nolo contendere made pursuant to chapter 853~~[-so long as]~~; provided that the disclosure to the director of health and the defendant does not frustrate a legitimate function of the county police departments; provided further that expunged records, records of or pertaining to any adjudication or disposition rendered in the case of a juvenile, or records containing data from the United States National Crime Information Center shall not be provided. The county police departments shall segregate or sanitize from the police reports information that would result in the likelihood or actual identification of individuals who furnished information in connection with the investigation or who were of in-

vestigatory interest. Records shall not be re-disclosed except to the extent permitted by law;

- (b) The defendant shall be granted conditional release with conditions as the court deems necessary if the court finds that the defendant is affected by physical or mental disease, disorder, or defect and that the defendant presents a danger to self or others, but that the defendant can be controlled adequately and given proper care, supervision, and treatment if the defendant is released on condition[~~:- For any defendant granted conditional release pursuant to this paragraph, and who was charged with a petty misdemeanor, misdemeanor, or violation, the period of conditional release shall be no longer than one year];~~ or
- (c) The defendant shall be discharged if the court finds that the defendant is no longer affected by physical or mental disease, disorder, or defect or, if so affected, that the defendant no longer presents a danger to self or others and is not in need of care, supervision, or treatment.”

2. By amending subsection (3) to read:

“(3) When ordering a hearing pursuant to subsection (2):

- (a) In nonfelony cases, the court shall appoint a qualified examiner to examine and report upon the physical and mental condition of the defendant. The court may appoint either a psychiatrist or a licensed psychologist. The examiner may be designated by the director of health from within the department of health. The examiner shall be appointed from a list of certified examiners as determined by the department of health. The court, in appropriate circumstances, may appoint an additional examiner or examiners; and
- (b) In felony cases, 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 licensed psychologist. The third member may be a psychiatrist, a licensed psychologist, or a qualified physician. One of the three shall be a psychiatrist or licensed psychologist designated by the director of health [~~from within the department of health~~]. The three examiners shall be appointed from a list of certified examiners as determined by the department of health.

To facilitate the examination and the proceedings thereon, the court may cause the defendant, if not then confined, to be committed to a hospital or other suitable facility for the purpose of examination for a period not exceeding thirty days or [~~such~~] a longer period as the court determines to be necessary for the purpose upon written findings for good cause shown. The court may direct that qualified physicians or psychologists retained by the defendant be permitted to witness 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 section 465-3(a)(3).”

SECTION 9. Section 704-411, Hawaii Revised Statutes, is amended by amending subsection (3) to read as follows:

“(3) When ordering a hearing pursuant to subsection (2):



- (a) In nonfelony cases, the court shall appoint a qualified examiner to examine and report upon the physical and mental condition of the defendant. The court may appoint either a psychiatrist or a licensed psychologist. The examiner may be designated by the director of health from within the department of health. The examiner shall be appointed from a list of certified examiners as determined by the department of health. The court, in appropriate circumstances, may appoint an additional examiner or examiners; and
- (b) In felony cases, 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 licensed psychologist. The third member may be a psychiatrist, a licensed psychologist, or a qualified physician. One of the three shall be a psychiatrist or licensed psychologist designated by the director of health[-] from within the department of health. The three examiners shall be appointed from a list of certified examiners as determined by the department of health.

To facilitate the examination and the proceedings thereon, the court may cause the defendant, if not then confined, to be committed to a hospital or other suitable facility for the purpose of examination for a period not exceeding thirty days or a longer period as the court determines to be necessary for the purpose upon written findings for good cause shown. The court may direct that qualified physicians or psychologists retained by the defendant be permitted to witness 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 section 465-3(a)(3)."

SECTION 10. Section 704-413, Hawaii Revised Statutes, is amended by amending subsection (4) to read as follows:

"(4) If, at any time after the order pursuant to this chapter granting conditional release, the court determines, after hearing evidence, that:

- (a) The person is still affected by a physical or mental disease, disorder, or defect, and the conditions of release have not been fulfilled; or
- (b) For the safety of the person or others, the person's conditional release should be revoked,

the court may forthwith modify the conditions of release or order the person to be committed to the custody of the director of health, subject to discharge or release in accordance with the procedure prescribed in section 704-412[-]; provided that, if satisfied that the person would benefit from temporary hospitalization that may render a revocation of conditional release unnecessary, the court, in lieu of revocation, may order hospitalization for a period not to exceed ninety days, subject to extension as appropriate, but in no event for a period exceeding a total of one year, and may reinstate or revoke conditional release at any time during the temporary hospitalization."

SECTION 11. 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. (1)** Upon filing of an application pursu-

ant 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 in felony cases, and one qualified examiner in nonfelony cases, to examine and report upon the physical and mental condition of the defendant. In felony cases, the court shall appoint at least one psychiatrist and at least one licensed psychologist. The third member may be a psychiatrist, a licensed psychologist, or a qualified physician. One of the three shall be a psychiatrist or licensed psychologist designated by the director of health ~~[from within the department of health]~~. The examiners shall be appointed from a list of certified examiners as determined by the department of health. To facilitate the examination and the proceedings thereon, the court may cause the defendant, if not then confined, to be committed to a hospital or other suitable facility for the purpose of the examination and may direct that qualified physicians or psychologists retained by the defendant be permitted to witness 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 section 465-3(a)(3).

(2) Upon the filing of an application pursuant to section 704-413 for modification of conditions of release, the court may proceed as provided in subsection (1)."

SECTION 12. Section 704-414, Hawaii Revised Statutes, is amended by amending subsection (1) to read as follows:

"(1) 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, the court shall appoint three qualified examiners in felony cases, and one qualified examiner in nonfelony cases, to examine and report upon the physical and mental condition of the defendant. In felony cases, the court shall appoint at least one psychiatrist and at least one licensed psychologist. The third member may be a psychiatrist, a licensed psychologist, or a qualified physician. One of the three shall be a psychiatrist or licensed psychologist designated by the director of health~~[-]~~ from within the department of health. The examiners shall be appointed from a list of certified examiners as determined by the department of health. To facilitate the examination and the proceedings thereon, the court may cause the defendant, if not then confined, to be committed to a hospital or other suitable facility for the purpose of the examination and may direct that qualified physicians or psychologists retained by the defendant be permitted to witness 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 section 465-3(a)(3)."

### PART III

SECTION 13. The purpose of this part is to amend chapter 706, Hawaii Revised Statutes, regarding disposition of convicted defendants, to:

- (1) Establish an enumerated priority schedule for payments that defendants are ordered to make following conviction;
- (2) Require defendants to pay restitution pursuant to chapter 353, Hawaii Revised Statutes, while in custody, notwithstanding any contrary law or court order;

- (3) Ensure that efforts are made to inform victims and their families of the right to be present at sentencing and to be heard, regardless of whether a pre-sentence diagnosis of the defendant is made or waived;
- (4) Repeal a provision that precludes a defendant convicted of a crime involving serious or substantial bodily injury within the previous five years from being eligible for intermediate sanctions such as drug court, veterans treatment court, and mental health court;
- (5) Repeal provisions related to a program of regimental discipline that has not been implemented;
- (6) Repeal a provision imposing a mandatory minimum prison term on repeat offenders convicted of small drug possession offenses who may be better managed with probation and drug treatment;
- (7) Authorize probation officers to request expungements on behalf of defendants; and
- (8) Provide courts with discretion to add certain conditions to probation, including a requirement that a defendant undergo mental health and substance abuse assessment, submit to a search by a probation officer, sign a waiver of extradition, and pay extradition costs.

SECTION 14. Chapter 706, Hawaii Revised Statutes, is amended by adding a new section to be appropriately designated and to read as follows:

**“§706- Payments by defendant; order of priority.** When a defendant is ordered to make payments pursuant to chapters 351, 706, 846F, and 853, or as otherwise provided by law, payments shall be made in the following order of priority:

- (1) Restitution;
- (2) Crime victims compensation fee;
- (3) Probation services fee;
- (4) Human trafficking victim services fee;
- (5) Other fees, including but not limited to internet crimes against children fee and drug demand reduction assessment fee;
- (6) DNA analysis monetary assessment; and
- (7) Fines.”

SECTION 15. Section 706-601, Hawaii Revised Statutes, is amended by amending subsection (3) to read as follows:

“(3) With the consent of the court, the requirement of a pre-sentence diagnosis may be waived by agreement of both the defendant and the prosecuting attorney[-]; provided that in felony cases, the prosecuting attorney shall inform, or make reasonable efforts to inform, the victim or the victim’s surviving immediate family members of their rights to be present at the sentencing hearing and to provide information relating to the impact of the crime, including any requested restitution.”

SECTION 16. Section 706-603, Hawaii Revised Statutes, is amended by amending subsection (4) to read as follows:

“(4) Restitution [~~to the victim of a sexual or violent crime~~] shall be made before payment of the monetary assessment[-] pursuant to section 706- .”

SECTION 17. Section 706-604, Hawaii Revised Statutes, is amended by amending subsection (3) to read as follows:

“(3) In all circuit court cases, regardless of whether a pre-sentence report has been prepared or waived, the court shall afford a fair opportunity to the victim to be heard on the issue of the defendant’s disposition, before imposing sentence. The court, service center, or agency personnel who prepare the pre-sentence diagnosis and report shall inform the victim of the sentencing date and of the victim’s opportunity to be heard. In the case of a homicide or where the victim is a minor or is otherwise unable to appear at the sentencing hearing, the victim’s family shall be afforded the fair opportunity to be heard.”

SECTION 18. Section 706-605, Hawaii Revised Statutes, is amended by amending subsection (6) to read as follows:

“(6) The court shall impose a compensation fee upon every person convicted of a criminal offense pursuant to section 351-62.6; provided that the court shall waive the imposition of a compensation fee if it finds that the defendant is unable to pay the compensation fee. When a defendant is ordered to make payments in addition to the compensation fee, payments by the defendant shall be made in the ~~following~~ order of priority[:

- (a) Restitution;
- (b) Crime victim compensation fee;
- (c) Probation services fee;
- (d) Other fees; and
- (e) ~~Fines.] established in section 706-~~ ”

SECTION 19. Section 706-605.1, Hawaii Revised Statutes, is amended to read as follows:

**“§706-605.1 Intermediate sanctions; eligibility; criteria and conditions.**

(1) The judiciary shall implement alternative programs that place, control, supervise, and treat selected defendants in lieu of a sentence of incarceration.

(2) Defendants may be considered for sentencing to alternative programs if they[:

- (a) ~~Have] have~~ not been convicted of a non-probationable class A felony[; and
- (b) ~~Have not, within the previous five years, been convicted of a crime involving serious bodily injury or substantial bodily injury as defined by chapter 707].~~

(3) A defendant may be sentenced by a district, family, or circuit court judge to alternative programs.

(4) As used in this section, “alternative programs” means programs that[, from time to time,] are created and funded by legislative appropriation or federal grant naming the judiciary or one of its operating agencies as the expending agency and that are intended to provide an alternative to incarceration. Alternative programs may include:

- (a) House arrest, or curfew using electronic monitoring and surveillance, or both;
- (b) Drug court programs for defendants with assessed alcohol or drug abuse problems, or both;
- (c) Therapeutic residential and nonresidential programs, including secure drug treatment facilities;
- ~~[(d) A program of regimental discipline pursuant to section 706-605.5;]~~ and
- ~~[(e)]~~ (d) Similar programs created and designated as alternative programs

by the legislature or the administrative director of the courts for qualified defendants who do not pose significant risks to the community.”

SECTION 20. 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 murder in the second degree, any class A felony, any class B felony, or any of the following class C felonies: [section]

- (a) Section 134-7 relating to persons prohibited from owning, possessing, or controlling firearms or ammunition; [section]
- (b) Section 134-8 relating to ownership, etc., of certain prohibited weapons; [section]
- (c) Section 134-17 only as it relates to providing false information or evidence to obtain a permit under section 134-9; [section]
- (d) Section 188-23 relating to possession or use of explosives, electro-fishing devices, and poisonous substances in state waters; [section]
- (e) Section 386-98(d)(1) relating to fraud violations and penalties; [section]
- (f) Section 431:2-403(b)(2) relating to insurance fraud; [section]
- (g) Section 707-703 relating to negligent homicide in the second degree; [section]
- (h) Section 707-711 relating to assault in the second degree; [section]
- (i) Section 707-713 relating to reckless endangering in the first degree; [section]
- (j) Section 707-716 relating to terroristic threatening in the first degree; [section]
- (k) Section 707-721 relating to unlawful imprisonment in the first degree; [section]
- (l) Section 707-732 relating to sexual assault in the third degree; [section]
- (m) Section 707-752 relating to promoting child abuse in the third degree; [section]
- (n) Section 707-757 relating to electronic enticement of a child in the second degree; [section]
- (o) Section 707-766 relating to extortion in the second degree; [section]
- (p) Section 708-811 relating to burglary in the second degree; [section]
- (q) Section 708-821 relating to criminal property damage in the second degree; [section]
- (r) Section 708-831 relating to theft in the second degree; [section]
- (s) Section 708-835.5 relating to theft of livestock; [section]
- (t) Section 708-836 relating to unauthorized control of propelled vehicle; [section]
- (u) Section 708-839.55 relating to unauthorized possession of confidential personal information; [section]
- (v) Section 708-839.8 relating to identity theft in the third degree; [section]
- (w) Section 708-852 relating to forgery in the second degree; [section]

- (x) ~~Section~~ 708-854 relating to criminal possession of a forgery device; ~~[section]~~
- (y) ~~Section~~ 708-875 relating to trademark counterfeiting; ~~[section]~~
- (z) ~~Section~~ 710-1071 relating to intimidating a witness; ~~[section]~~
- (aa) ~~Section~~ 711-1103 relating to riot; ~~[section]~~
- (bb) ~~Section~~ 712-1221 relating to promoting gambling in the first degree; ~~[section]~~
- (cc) ~~Section~~ 712-1224 relating to possession of gambling records in the first degree; ~~[section 712-1243 relating to promoting a dangerous drug in the third degree; section]~~
- (dd) ~~Section~~ 712-1247 relating to promoting a detrimental drug in the first degree; ~~[section]~~ or
- (ee) ~~Section~~ 846E-9 relating to failure to comply with covered offender registration requirements,

or who is convicted of attempting to commit murder in the second degree, 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 the following felonies, including an attempt to commit the same: murder, murder in the first or second degree, a class A felony, a class B felony, any of the class C felony offenses enumerated above, or any felony conviction of another jurisdiction, shall be sentenced to a mandatory minimum period of imprisonment without possibility of parole ~~[during such period as follows:]~~ as provided in subsection (2).

(2) A mandatory minimum period of imprisonment without possibility of parole during that period shall be imposed pursuant to subsection (1), as follows:

- (a) One prior felony conviction:
  - (i) Where the instant conviction is for murder in the second degree or attempted murder in the second degree—ten years;
  - (ii) Where the instant conviction is for a class A felony—six years, eight months;
  - (iii) Where the instant conviction is for a class B felony—three years, four months; and
  - (iv) 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 murder in the second degree or attempted murder in the second degree—twenty years;
  - (ii) Where the instant conviction is for a class A felony—thirteen years, four months;
  - (iii) Where the instant conviction is for a class B felony—six years, eight months; and
  - (iv) Where the instant conviction is for a class C felony offense enumerated above—three years, four months; and
- (c) Three or more prior felony convictions:
  - (i) Where the instant conviction is for murder in the second degree or attempted murder in the second degree—thirty years;
  - (ii) Where the instant conviction is for a class A felony—twenty years;
  - (iii) Where the instant conviction is for a class B felony—ten years; and
  - (iv) Where the instant conviction is for a class C felony offense enumerated above—five years.

~~[(2)]~~ (3) Except as provided in subsection ~~[(3)]~~, (4), 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]~~ the period as follows:

- (a) Within twenty years after a prior felony conviction where the prior felony conviction was for murder in the first degree or attempted murder in the first degree;
- (b) Within twenty years after a prior felony conviction where the prior felony conviction was for murder in the second degree or attempted murder in the second degree;
- (c) Within twenty years after a prior felony conviction where the prior felony conviction was for a class A felony;
- (d) Within ten years after a prior felony conviction where the prior felony conviction was for a class B felony;
- (e) Within five years after a prior felony conviction where the prior felony conviction was for a class C felony offense enumerated above;
- (f) Within the maximum term of imprisonment possible after a prior felony conviction of another jurisdiction.

~~[(3)]~~ (4) 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]~~ that 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 offense enumerated above.

~~[(4)]~~ (5) Notwithstanding any other law to the contrary, any person convicted of any of the following misdemeanor offenses:

- (a) Section 707-712 relating to assault in the third degree;
- (b) Section 707-717 relating to terroristic threatening in the second degree;
- (c) Section 707-733 relating to sexual assault in the fourth degree;
- (d) Section 708-822 relating to criminal property damage in the third degree;
- (e) Section 708-832 relating to theft in the third degree; and
- (f) Section 708-833.5(2) relating to misdemeanor shoplifting,

and who has been convicted of any of the offenses enumerated above on at least three prior and separate occasions within three years of the date of the commission of the present offense, shall be sentenced to no less than nine months of imprisonment. Whenever a court sentences a defendant under this subsection for an offense under section 707-733, the court shall order the defendant to participate in a sex offender assessment and, if recommended based on the assessment, participate in the sex offender treatment program established by chapter 353E.

~~[(5)]~~ (6) The sentencing court may impose the above sentences consecutive to any sentence imposed on the defendant for a prior conviction, but ~~[such]~~ the sentence shall be imposed concurrent to the sentence imposed for the instant conviction. The court may impose a lesser mandatory minimum period of imprisonment without possibility of parole than that mandated by this section where the court finds that strong mitigating circumstances warrant ~~[such]~~ the

action. Strong mitigating circumstances shall include, but shall not be limited to the provisions of section 706-621. The court shall provide a written opinion stating its reasons for imposing the lesser sentence.

~~[(6)]~~ (7) A person who is imprisoned in a correctional institution pursuant to subsection (1) shall not be paroled prior to the expiration of the mandatory minimum term of imprisonment imposed pursuant to subsection (1).

~~[(7)]~~ (8) For purposes of this section:

- (a) Convictions under two or more counts of an indictment or complaint shall be considered a single conviction without regard to when the convictions occur;
- (b) 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; and
- (c) A conviction occurs on the date judgment is entered.”

SECTION 21. Section 706-622.5, Hawaii Revised Statutes, is amended as follows:

1. By amending subsection (1) to read:

“(1) Notwithstanding section 706-620(3), a person convicted for the first or second time for any offense under section 329-43.5 involving the possession or use of drug paraphernalia or any felony offense under part IV of chapter 712 involving the possession or use of any dangerous drug, detrimental drug, harmful drug, intoxicating compound, marijuana, or marijuana concentrate, as defined in section 712-1240, but not including any offense under part IV of chapter 712 involving the distribution or manufacture of any such drugs or substances and not including any methamphetamine [~~trafficking~~] offenses under sections 712-1240.7 [~~and~~], 712-1240.8[;] as that section was in effect prior to July 1, 2016, 712-1241, and 712-1242, is eligible to be sentenced to probation under subsection (2) if the person meets the following criteria:

- (a) The court has determined that the person is nonviolent after reviewing the person’s criminal history, the factual circumstances of the offense for which the person is being sentenced, and any other relevant information;
- (b) The person has been assessed by a certified substance abuse counselor to be in need of substance abuse treatment due to dependency or abuse under the applicable Diagnostic and Statistical Manual and Addiction Severity Index; and
- (c) Except for those persons directed to substance abuse treatment under the supervision of the drug court, the person presents a proposal to receive substance abuse treatment in accordance with the treatment plan prepared by a certified substance abuse counselor through a substance abuse treatment program that includes an identified source of payment for the treatment program.”

2. By amending subsection (4) to read:

“(4) ~~[The court, upon]~~ Upon written application from a person sentenced under this part[;] or a probation officer, the court shall issue a court order to expunge the record of conviction for that particular offense; provided that a person has successfully completed the substance abuse treatment program and complied with other terms and conditions of probation. A person sentenced to probation under this section who has not previously been sentenced under this section shall be eligible for one time only for expungement under this subsection.”



SECTION 22. Section 706-622.9, Hawaii Revised Statutes, is amended by amending subsection (3) to read as follows:

“(3) ~~[The court, upon]~~ Upon written application from a person sentenced under this part[,] ~~or a probation officer, the court~~ shall issue a court order to expunge the record of conviction for that particular offense; provided that a person has successfully completed the substance abuse treatment program and complied with other terms and conditions of probation. A person sentenced to probation under this section shall be eligible for expungement under this subsection only if the person has not been previously convicted of a felony offense in this or another jurisdiction.”

SECTION 23. Section 706-624, Hawaii Revised Statutes, is amended by amending subsection (2) to read as follows:

“(2) Discretionary conditions. The court may provide, as further conditions of a sentence of probation, to the extent that the conditions are reasonably related to the factors set forth in section 706-606 and to the extent that the conditions involve only 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 to be determined by the court at sentencing in class A felony cases under section 707-702, not exceeding two years in class A felony cases under part IV of chapter 712, not exceeding eighteen months in class B felony cases, not exceeding one year in class C felony cases, not exceeding six months in misdemeanor cases, and not exceeding five days in petty misdemeanor cases; provided that notwithstanding any other provision of law, any order of imprisonment under this subsection that provides for prison work release shall require the defendant to pay thirty per cent of the defendant’s gross pay earned during the prison work release period to satisfy any restitution order. The payment shall be handled by the adult probation division and shall be paid to the victim on a monthly basis;
- (b) Perform a specified number of hours of services to the community as described in section 706-605(1)(d);
- (c) Support the defendant’s dependents and meet other family responsibilities;
- (d) Pay a fine imposed pursuant to section 706-605(1)(b);
- (e) Work conscientiously at suitable employment or pursue conscientiously a course of study or vocational training that will equip the defendant for suitable employment;
- (f) Refrain from engaging in a specified occupation, business, or profession bearing a reasonably direct relationship to the conduct constituting the crime or engage in the specified occupation, business, or profession only to a stated degree or under stated circumstances;
- (g) Refrain from frequenting specified kinds of places or from associating unnecessarily with specified persons, including 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;
- (h) Refrain from use of alcohol or any use of narcotic drugs or controlled substances without a prescription;

- (i) Refrain from possessing a firearm, ammunition, destructive device, or other dangerous weapon;
- (j) Undergo available medical or mental health assessment and treatment, including assessment and treatment for substance abuse dependency, and remain in a specified facility if required for that purpose;
- (k) Reside in a specified place or area or refrain from residing in a specified place or area;
- (l) Submit to periodic urinalysis or other similar testing procedure;
- (m) Refrain from entering specified geographical areas without the court's permission;
- (n) Refrain from leaving the person's dwelling place except to go to and from the person's place of employment, the office of the person's physician or dentist, the probation office, or any other location as may be approved by the person's probation officer pursuant to court order. As used in this paragraph, "dwelling place" includes the person's yard or, in the case of condominiums, the common elements;
- (o) Comply with a specified curfew;
- (p) Submit to monitoring by an electronic monitoring device; [ø]
- (q) Submit to a search by any probation officer, with or without a warrant, of the defendant's person, residence, vehicle, or other sites or property under the defendant's control, based upon the probation officer's reasonable suspicion that illicit substances or contraband may be found on the person or in the place to be searched;
- (r) Sign a waiver of extradition and pay extradition costs as determined and ordered by the court;
- (s) Comply with a service plan developed using current assessment tools; and
- [ø] (t) Satisfy other reasonable conditions as the court may impose."

SECTION 24. Section 706-642, Hawaii Revised Statutes, is amended by amending subsection (3) to read as follows:

"(3) When a defendant sentenced to pay a fine is also ordered to make restitution or reparation to the victim or victims, or to the person or party who has incurred loss or damage because of the defendant's crime, the payment of restitution or reparation shall have priority over the payment of the fine~~[-], pursuant to section 706-~~. No fine shall be collected until the restitution or reparation order has been satisfied."

SECTION 25. Section 706-646, Hawaii Revised Statutes, is amended by amending subsections (2) and (3) to read as follows:

"(2) The court shall order the defendant to make restitution for reasonable and verified losses suffered by the victim or victims as a result of the defendant's offense when requested by the victim. The court shall order restitution to be paid to the crime victim compensation commission ~~[in the event that]~~ if the victim has been given an award for compensation under chapter 351. If the court orders payment of a fine in addition to restitution or a compensation fee, or both, the payment of restitution and compensation fee shall ~~[have priority over the payment of the fine, and payment of restitution shall have priority over payment of a compensation fee.]~~ be made pursuant to section 706- .

(3) In ordering restitution, the court shall not consider the defendant's financial ability to make restitution in determining the amount of restitution to order. The court, however, shall consider the defendant's financial ability to make restitution for the purpose of establishing the time and manner of payment. The court shall specify the time and manner in which restitution is to be paid. While the defendant is in the custody of the department of public safety, restitution shall be collected pursuant to chapter 353 and any court-ordered payment schedule shall be suspended. Restitution shall be a dollar amount that is sufficient to reimburse any victim fully for losses, including but not limited to:

- (a) Full value of stolen or damaged property, as determined by replacement costs of like property, or the actual or estimated cost of repair, if repair is possible;
- (b) Medical expenses; and
- (c) Funeral and burial expenses incurred as a result of the crime.”

SECTION 26. Section 706-648, Hawaii Revised Statutes, is amended by amending subsection (2) to read as follows:

“(2) The entire fee ordered or assessed shall be payable forthwith by cash, check, or by a credit card approved by the court. When a defendant is also ordered to pay a fine, make restitution, pay a crime victim compensation fee, or pay other fees in addition to the probation services fee under subsection (1), payments by the defendant shall be made ~~[in the following order of priority:~~

- ~~(a) Restitution;~~
- ~~(b) Crime victim compensation fee;~~
- ~~(c) Probation services fee;~~
- ~~(d) Other fees; and~~
- ~~(e) Fines.] pursuant to section 706- .”~~

SECTION 27. Section 706-650, Hawaii Revised Statutes, is amended to read as follows:

~~“[§706-650]~~ **Drug demand reduction assessments; special fund.** (1) In addition to any disposition authorized by chapter 706 or 853, any person who is:

- (a) Convicted of an offense under part IV of chapter 712, except sections 712-1250.5 and 712-1257;
- (b) Convicted under section 707-702.5;
- (c) Convicted of a felony or misdemeanor offense under part IV of chapter 329;
- (d) Convicted under section 291-3.1, 291-3.2, 291-3.3, 291E-61, or 291E-61.5;
- (e) Found in violation of part III of chapter 291E; or
- (f) Charged with any offense under paragraphs (a) to (d) who has been granted a deferred acceptance of guilty or no contest plea;

shall be ordered to pay a monetary assessment under subsection (2), except as provided under subsection ~~[(6)-]~~ (5).

(2) Monetary assessments for individuals subject to subsection (1) shall not exceed the following:

- (a) \$3,000 when the offense is a class A felony;
- (b) \$2,000 when the offense is a class B felony;
- (c) \$1,000 when the offense is a class C felony;
- (d) \$500 when the offense is a misdemeanor; or
- (e) \$250 when the person has been found guilty of an offense under sec-

tion 712-1249, 291-3.1, 291-3.2, 291-3.3, 291E-61, or has been found in violation of part III of chapter 291E.

Notwithstanding sections 706-640 and 706-641 and any other law to the contrary, the assessments provided by this section shall be in addition to and not in lieu of, and shall not be used to offset or reduce, any fine authorized or required by law~~[-] and shall be paid pursuant to section 706-~~

(3) There is established a special fund to be known as the “drug demand reduction assessments special fund” to be administered by the department of health. The disbursement of money from the drug demand reduction assessments special fund shall be used to supplement substance abuse treatment and other substance abuse demand reduction programs.

(4) All monetary assessments paid and interest accrued on funds collected pursuant to this section shall be deposited into the drug demand reduction assessments special fund.

~~[(5) Restitution to the victim of a crime enumerated in subsection (1) shall be made, and probation fees and crime victim compensation fees imposed under part III of chapter 706 shall be paid, before payment of the monetary assessment.~~

~~(6)~~ (5) If the court determines that the person has the ability to pay the monetary assessment and is eligible for probation or will not be sentenced to incarceration, unless otherwise required by law, the court may order the person to undergo a substance abuse treatment program at the person’s expense. If the person undergoes a substance abuse treatment program at the person’s expense, the court may waive or reduce the amount of the monetary assessment. Upon a showing by the person that the person lacks the financial ability to pay all or part of the monetary assessment, the court may waive or reduce the amount of the monetary assessment.”

SECTION 28. Section 706-650.5, Hawaii Revised Statutes, is amended by amending subsection (5) to read as follows:

“(5) When a defendant is ordered to make payments in addition to the human trafficking victim services fee authorized under subsection (2), payments by the defendant shall be made ~~[in the following order of priority:~~

- ~~(a) Restitution imposed under section 706-646, 707-785, or 707-786;~~
- ~~(b) Crime victim compensation fee imposed under section 351-62.6;~~
- ~~(c) Probation services fee imposed under section 706-648;~~
- ~~(d) Human trafficking victim services fee imposed under subsection (2);~~
- ~~(e) Other fees; and~~
- ~~(f) Fines.] pursuant to section 706- .”~~

SECTION 29. Section 706-660, Hawaii Revised Statutes, is amended by amending subsection (2) to read as follows:

“(2) A person who has been convicted of a class B or class C felony for any offense under part IV of chapter 712 may be sentenced to an indeterminate term of imprisonment; provided that this subsection shall not apply to sentences imposed under sections 706-606.5, 706-660.1, 712-1240.5, 712-1240.8~~;~~ as that section was in effect prior to July 1, 2016, 712-1242, 712-1245, 712-1249.5, 712-1249.6, 712-1249.7, and 712-1257.

When ordering a sentence under this subsection, the court shall impose a term of imprisonment, which shall be as follows:

- (a) For a class B felony—ten years or less, but not less than five years; and
- (b) For a class C felony—five years or less, but not less than one year.

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

SECTION 30. Section 706-605.5, Hawaii Revised Statutes, is repealed.

#### PART IV

SECTION 31. The purpose of this part is to amend chapter 707, Hawaii Revised Statutes, regarding offenses against the person, to:

- (1) Amend the definition of “sexual contact” to repeal language that:
  - (A) Exempts married couples from certain sexual assault offenses; and
  - (B) Has the effect of requiring the prosecution to allege and prove that a victim who was a minor under the age of fourteen was not married to the offender, even though a minor of that age cannot legally marry in any event;
- (2) Amend the definition of sexual assault in the fourth degree to maintain an exception for married couples because of the relatively low threshold for culpability in that offense; and
- (3) Align the organization of the mental state requirements for assault in the second degree with that of assault in the third degree.

SECTION 32. Section 707-700, Hawaii Revised Statutes, is amended by amending the definition of “sexual contact” to read as follows:

““Sexual contact” means any touching, other than acts of “sexual penetration”, of the sexual or other intimate parts of ~~[a person not married to the actor,] another~~, or of the sexual or other intimate parts of the actor by ~~[the person,] another~~, whether directly or through the clothing or other material intended to cover the sexual or other intimate parts.”

SECTION 33. 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) The person intentionally ~~[or,]~~ knowingly, or recklessly causes substantial bodily injury to another;
  - (b) The person recklessly causes serious ~~[or-substantial]~~ bodily injury to another;
  - (c) 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;
  - (d) The person intentionally or knowingly causes bodily injury to another with a dangerous instrument;
  - (e) The person intentionally or knowingly causes bodily injury to an educational worker who is engaged in the performance of duty or who is within an educational facility. For the purposes of this paragraph, “educational worker” means any administrator, specialist, counselor, teacher, or employee of the department of education or an employee of a charter school; a person who is a volunteer, as defined in section 90-1, in a school program, activity, or function that is established, sanctioned, or approved by the department of education; or a person hired by the department of education on a contractual basis and engaged in carrying out an educational function;

- (f) The person intentionally or knowingly causes bodily injury to any emergency medical services provider who is engaged in the performance of duty. For the purposes of this paragraph, “emergency medical services provider” means emergency medical services personnel, as defined in section 321-222, and physicians, physician’s assistants, nurses, nurse practitioners, certified registered nurse anesthetists, respiratory therapists, laboratory technicians, radiology technicians, and social workers, providing services in the emergency room of a hospital;
- (g) The person intentionally or knowingly causes bodily injury to a person employed at a state-operated or -contracted mental health facility. For the purposes of this paragraph, “a person employed at a state-operated or -contracted mental health facility” includes health care professionals as defined in section 451D-2, administrators, orderlies, security personnel, volunteers, and any other person who is engaged in the performance of a duty at a state-operated or -contracted mental health facility;
- (h) The person intentionally or knowingly causes bodily injury to a person who:
  - (i) The defendant has been restrained from, by order of any court, including an ex parte order, contacting, threatening, or physically abusing pursuant to chapter 586; or
  - (ii) Is being protected by a police officer ordering the defendant to leave the premises of that protected person pursuant to section 709-906(4), during the effective period of that order; or
- [(i)] The person intentionally or knowingly causes bodily injury to any firefighter or water safety officer who is engaged in the performance of duty. For the purposes of this paragraph, “firefighter” has the same meaning as in section 710-1012 and “water safety officer” means any public servant employed by the United States, the State, or any county as a lifeguard or person authorized to conduct water rescue or ocean safety functions.”

SECTION 34. Section 707-733, Hawaii Revised Statutes, is amended by amending subsection (1) to read as follows:

“(1) A person commits the offense of sexual assault in the fourth degree if:

- (a) The person knowingly subjects another person, not married to the actor, to sexual contact by compulsion or causes another person, not married to the actor, to have sexual contact with the actor by compulsion;
- (b) The person knowingly exposes the person’s genitals to another person under circumstances in which the actor’s conduct is likely to alarm the other person or put the other person in fear of bodily injury; or
- (c) The person knowingly trespasses on property for the purpose of subjecting another person to surreptitious surveillance for the sexual gratification of the actor.”

## PART V

SECTION 35. The legislature finds that Act 49, Session Laws of Hawaii 2004, established the offense of habitual property crime, a class C felony, in section 708-803, Hawaii Revised Statutes. The legislature found that, in 2002, Hawaii ranked first in the nation for property crime rates and second in larceny theft rates, and that a large portion of the crimes are committed by habitual offenders. The legislature also found that Act 49 would punish repeat property crime offenders by making what would otherwise be a misdemeanor offense a class C felony.

The legislature also finds that the Federal Bureau of Investigation reported in 2012 that Hawaii ranked thirty-first out of fifty-two jurisdictions regarding the rate of property crimes per one hundred thousand inhabitants. Act 118, Session Laws<sup>1</sup> 2014, amended section 708-803(4), Hawaii Revised Statutes, by clarifying that the sentence for a person convicted of habitual property crime will be: (1) an indeterminate term of imprisonment of five years, with a minimum term of one year; or (2) for a first conviction only, a term of probation of five years, with conditions to include but not be limited to one year of imprisonment.

The legislature further finds that the dollar amount that makes a theft offense a felony ranges among the states from \$200 in New Jersey and Virginia to \$2,500 in Wisconsin. The State's felony theft threshold is the fifth lowest among fifty-one jurisdictions, putting Hawaii in the bottom ten per cent. Thirty-one of those jurisdictions have felony theft thresholds of \$1,000 or more. Twenty-six states have increased the felony theft threshold since 2005. Hawaii's threshold is \$300 and was last raised in 1986, from \$200. The impetus to increase felony theft thresholds often is the anticipated reductions to prison populations and associated expenses.

The legislature further finds that the most frequently cited rationale for the increase in the felony theft threshold is inflation, as measured by the United States Department of Labor's Consumer Price Index, and concerns about fundamental fairness when dollar values have not been adjusted in years, even decades, despite inflation. Other factors considered include the felony theft thresholds of adjacent states and the impact that increasing thresholds could have on frequent victims of property crimes, including retail businesses.

The purpose of this part is to improve property crime enforcement by making more repeat offenders of crimes prohibited by this chapter subject to punishment for a class C felony when they commit another subject offense. This Act also balances the need to target professional theft and other property rights offenders with the need to update the State's felony theft threshold. More specifically, this part amends chapter 708, Hawaii Revised Statutes, regarding offenses against property rights by:

- (1) Including more repeat theft and other property rights offenders within the definition of "habitual property crime perpetrator" and holding them accountable for more of their prior convictions, by increasing the look-back period for prior convictions from five years to ten years, by reducing by one offense the number of prior convictions needed to qualify as habitual, by allowing three petty misdemeanors to qualify as habitual, and by eliminating the requirement that convictions have occurred on separate dates;
- (2) Declaring that the state of mind required to commit the offense of habitual property crime does not apply to the offender's status as a habitual property crime perpetrator because the offender's culpability arises from the offender's status, not from the offender's state of mind with regard to that status;

- (3) Increasing the dollar amount that makes an offense a felony for the offenses of theft in the second degree, theft in the third degree, shoplifting, and theft of utility services, to partially reflect the effect of inflation since the felony theft threshold was last raised; and
- (4) Repealing a provision that subjects a person to a separate charge and enhanced penalty for using a computer to commit an underlying theft crime because it seems unduly harsh, given the prevalence of “smart phones” and other computing devices.

SECTION 36. Section 708-803, Hawaii Revised Statutes, is amended to read as follows:

**“§708-803 Habitual property crime.** (1) A person commits the offense of habitual property crime if the person is a habitual property crime perpetrator and commits a ~~[misdemeanor offense within this chapter.]~~ property crime.

(2) For the purposes of this section, “habitual property crime perpetrator” means a person who, within ~~[five]~~ ten years of the instant offense, has convictions for ~~[offenses within this chapter for:~~

- (a) ~~[Three felonies within this chapter;]~~ Any combination of two felonies or misdemeanors; or
- (b) ~~[Three misdemeanors within this chapter; or~~
- (e) ~~Any combination of three felonies and misdemeanors within this chapter.]~~ Any combination of either one felony or one misdemeanor and one petty misdemeanor; or
- (c) Three petty misdemeanors.

The convictions ~~[must have occurred on separate dates and]~~ shall be for separate incidents on separate dates. The prosecution is not required to prove any state of mind with respect to the person’s status as a habitual property crime perpetrator. Proof that the person has the requisite minimum prior convictions shall be sufficient to establish this element.

(3) A person commits a property crime if the person engages in conduct that constitutes an offense under this chapter. It can be established that the person has committed a property crime by either the prosecution proving that the person is guilty of or by the person pleading guilty or no contest to committing any offense under this chapter.

~~(3)~~ (4) Habitual property crime is a class C felony.

~~(4)~~ (5) For a conviction under this section, the sentence shall be either:

- (a) An indeterminate term of imprisonment of five years; provided that the minimum term of imprisonment shall be not less than one year; or
- (b) A term of probation of five years, with conditions to include but not be limited to one year of imprisonment; provided that probation shall only be available for a first conviction under this section.”

SECTION 37. 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) Of property from the person of another;
- (b) Of property or services the value of which exceeds ~~[\$300;]~~ \$750;
- (c) Of an aquacultural product or part thereof from premises that are fenced or enclosed in a manner designed to exclude intruders or



there is prominently displayed on the premises a sign or signs sufficient to give notice and reading as follows: “Private Property”, “No Trespassing”, or a substantially similar message;

- (d) Of agricultural equipment, supplies, or products, or part thereof, the value of which exceeds \$100 but does not exceed \$20,000, or of agricultural products that exceed twenty-five pounds, from premises that are fenced, enclosed, or secured in a manner designed to exclude intruders or there is prominently displayed on the premises a sign or signs sufficient to give notice and reading as follows: “Private Property”, “No Trespassing”, or a substantially similar message; or if at the point of entry of the premise, a crop is visible. The sign or signs, containing letters not less than two inches in height, shall be placed along the boundary line of the land in a manner and in such a position as to be clearly noticeable from outside the boundary line. Possession of agricultural products without ownership and movement certificates, when a certificate is required pursuant to chapter 145, is prima facie evidence that the products are or have been stolen; or
- (e) Of agricultural commodities that are generally known to be marketed for commercial purposes. Possession of agricultural commodities without ownership and movement certificates, when a certificate is required pursuant to section 145-22, is prima facie evidence that the products are or have been stolen; provided that “agriculture commodities” has the same meaning as in section 145-21.”

SECTION 38. Section 708-832, Hawaii Revised Statutes, is amended by amending subsection (1) to read as follows:

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

- (a) Of property or services the value of which exceeds [~~\$100;~~] \$250; or
- (b) Of gasoline, diesel fuel, or other related petroleum products used as propellants of any value not exceeding [~~\$300;~~] \$750.”

SECTION 39. Section 708-833, Hawaii Revised Statutes, is amended by amending subsection (1) to read as follows:

“(1) A person commits the offense of theft in the fourth degree if the person commits theft of property or services of any value not in excess of [~~\$100;~~] \$250.”

SECTION 40. 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~~] theft by means of shoplifting as defined in section 708-830 shall be sentenced [~~as follows:~~] to the following minimum fines:

- (1) In cases involving [~~property the value or aggregate value of which exceeds \$300;—as~~] a class C felony, [~~provided that~~] the minimum fine shall be four times the value or aggregate value of the property involved;
- (2) In cases involving [~~property the value or aggregate value of which exceeds \$100;—as~~] a misdemeanor, [~~provided that~~] the minimum fine

shall be three times the value or aggregate value of the property involved;

- (3) In cases involving ~~[property the value or aggregate value of which is \$100 or less; as]~~ a petty misdemeanor, ~~[provided that]~~ the minimum fine shall be twice the value or aggregate value of the property involved;
- (4) If a person has previously been convicted of committing ~~[the offense]~~ theft by means of shoplifting as defined in section 708-830, the minimum fine shall be doubled that specified in paragraphs (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 community services as authorized by section ~~[§706-605(1)(d)]~~.”

SECTION 41. Section 708-839.5, Hawaii Revised Statutes, is amended by amending subsection (4) to read as follows:

“(4) A person commits the offense of theft of utility services in the first degree in cases where the theft:

- (a) Accrues to the benefit of any commercial trade or business, including any commercial trade or business operating in a residence, home, or dwelling;
- (b) Is obtained through the services of a person hired to commit the theft of utility services; in which event, both the person hired and the person responsible for the hiring shall be punished under this section as a class C felony; or
- (c) Accrues to the benefit of a residence, home, or dwelling where the value of the theft of utility services exceeds ~~[\$300.]~~ \$750.

Theft of utility services in the first degree is a class C felony, and shall be sentenced in accordance with chapter 706, except that for a first offense the court shall impose a minimum sentence of a fine of at least \$1,000 or two times the value of the theft, whichever is greater.”

SECTION 42. Section 708-893, Hawaii Revised Statutes, is amended by amending subsection (1) to read as follows:

“(1) A person commits the offense of use of a computer in the commission of a separate crime if the person~~:~~

- ~~(a)~~ ~~Intentionally uses a computer to obtain control over the property of the victim to commit theft in the first or second degree; or~~
- ~~(b)~~ ~~Knowingly] knowingly~~ uses a computer to identify, select, solicit, persuade, coerce, entice, induce, procure, pursue, surveil, contact, harass, annoy, or alarm the victim or intended victim of the following offenses:
  - ~~(i)~~ (a) Section 707-726, relating to custodial interference in the first degree;
  - ~~(ii)~~ (b) Section 707-727, relating to custodial interference in the second degree;
  - ~~(iii)~~ (c) Section 707-731, relating to sexual assault in the second degree;
  - ~~(iv)~~ (d) Section 707-732, relating to sexual assault in the third degree;
  - ~~(v)~~ (e) Section 707-733, relating to sexual assault in the fourth degree;
  - ~~(vi)~~ (f) Section 707-751, relating to promoting child abuse in the second degree;
  - ~~(vii)~~ (g) Section 711-1106, relating to harassment;
  - ~~(viii)~~ (h) Section 711-1106.5, relating to harassment by stalking; or

~~(\*)~~ (i) Section 712-1215, relating to promoting pornography for minors.”

## PART VI

SECTION 43. The purpose of this part is to amend chapter 709, Hawaii Revised Statutes, regarding offenses against the family and against incompetents, to:

- (1) Clarify that, regarding the offense of abuse of family or household members, “family or household members” do not include adult roommates or cohabitants who are, or were, only in an economic or contractual affiliation;
- (2) Distinguish between perpetrators who are younger or older than eighteen with regard to ordering a period of separation following an apparent act of physical abuse;
- (3) Clarify that abuse in the presence of a household member who is less than fourteen years of age applies to abuse that occurs in the presence of that member for purposes of charging the abuser; and
- (4) Provide for moving the prohibition against furnishing tobacco and electronic smoking devices to minors to chapter 712, Hawaii Revised Statutes, regarding offenses against public health and morals, where it more logically would be found, by repealing the prohibition from chapter 709, Hawaii Revised Statutes, regarding offenses against family and against incompetents.

SECTION 44. Section 709-906, Hawaii Revised Statutes, is amended as follows:

1. By amending subsection (1) to read:

“(1) It shall be unlawful for any person, singly or in concert, to physically abuse a family or household member or to refuse compliance with the lawful order of a police officer under subsection (4). The police, in investigating any complaint of abuse of a family or household member, upon request, may transport the abused person to a hospital or safe shelter.

For the purposes of this section:

“Business day” means any calendar day, except Saturday, Sunday, or any state holiday.

“Family or household member” ~~means~~:

- (a) Means spouses or reciprocal beneficiaries, former spouses or reciprocal beneficiaries, persons in a dating relationship as defined under section 586-1, persons who have a child in common, parents, children, persons related by consanguinity, and persons jointly residing or formerly residing in the same dwelling unit[-]; and
- (b) Does not include those who are, or were, adult roommates or cohabitants only by virtue of an economic or contractual affiliation.”

2. By amending subsection (4) to read:

“(4) Any police officer, with or without a warrant, shall take the following course of action, regardless of whether the physical abuse or harm occurred in the officer’s presence:

- (a) The police officer shall make reasonable inquiry of the family or household member upon whom the officer believes physical abuse or harm has been inflicted and other witnesses as there may be;
- (b) ~~[The police officer lawfully shall order the person]~~ If the person who the police officer reasonably believes to have inflicted the abuse is eighteen years of age or older, the police officer lawfully shall order

the person to leave the premises for a period of separation, during which time the person shall not initiate any contact, either by telephone or in person, with the family or household member; provided that the person is allowed to enter the premises with police escort to collect any necessary personal effects. The period of separation shall commence when the order is issued and shall expire at 6:00 p.m. on the second business day following the day the order was issued; provided that the day the order is issued shall not be included in the computation of the two business days;

(c) If the person who the police officer reasonably believes to have inflicted the abuse is under the age of eighteen, the police officer may order the person to leave the premises for a period of separation, during which time the person shall not initiate any contact with the family or household member by telephone or in person; provided that the person is allowed to enter the premises with police escort to collect any necessary personal effects. The period of separation shall commence when the order is issued and shall expire at 6:00 p.m. on the second business day following the day the order was issued; provided that the day the order is issued shall not be included in the computation of the two business days. The order of separation may be amended at any time by a judge of the family court. In determining whether to order a person under the age of eighteen to leave the premises, the police officer may consider the following factors:

(i) Age of the person;

(ii) Relationship between the person and the family or household member upon whom the police officer reasonably believes the abuse has been inflicted; and

(iii) Ability and willingness of the parent, guardian, or other authorized adult to maintain custody and control over the person;

[(e)] (d) All persons who are ordered to leave as stated above shall be given a written warning citation stating the date, time, and location of the warning and stating the penalties for violating the warning. A copy of the warning citation shall be retained by the police officer and attached to a written report which shall be submitted in all cases. A third copy of the warning citation shall be given to the abused person;

[(d)] (e) If the person so ordered refuses to comply with the order to leave the premises or returns to the premises before the expiration of the period of separation, or if the person so ordered initiates any contact with the abused person, the person shall be placed under arrest for the purpose of preventing further physical abuse or harm to the family or household member; and

[(e)] (f) The police officer shall seize all firearms and ammunition that the police officer has reasonable grounds to believe were used or threatened to be used in the commission of an offense under this section.”

3. By amending subsection (9) to read:

“(9) Where physical abuse occurs in the presence of ~~any~~ a minor, as defined in section 706-606.4, and the minor is a family or household member [who is] less than fourteen years of age, abuse of a family or household member is a class C felony.”

SECTION 45. Section 709-908, Hawaii Revised Statutes, is repealed.

## PART VII

SECTION 46. The purpose of this part is to amend chapter 710, Hawaii Revised Statutes, regarding offenses against public administration, to:

- (1) Establish the felony offense of resisting an order to stop a motor vehicle in the first degree, applicable when a person both flees from a police officer and does so by driving recklessly or at high speed; and
- (2) Make the existing misdemeanor offense of resisting an order to stop a motor vehicle a second degree offense involving flight from a police officer without reckless or high speed driving.

SECTION 47. Chapter 710, Hawaii Revised Statutes, is amended by adding a new section to be appropriately designated and to read as follows:

**“§710- Resisting an order to stop a motor vehicle in the first degree. (1)**

A person commits the offense of resisting an order to stop a motor vehicle in the first degree if the person:

- (a) Intentionally fails to obey a direction of a law enforcement officer, acting under color of the law enforcement officer’s official authority, to stop the person’s motor vehicle; and
- (b) While intentionally fleeing from or attempting to elude a law enforcement officer:
  - (i) Operates the person’s motor vehicle in reckless disregard of the safety of other persons; or
  - (ii) Operates the person’s motor vehicle in reckless disregard of the risk that the speed of the person’s vehicle exceeds:
    - (A) The applicable state or county speed limit by thirty miles per hour or more; or
    - (B) Eighty miles per hour or more, irrespective of the applicable state or county speed limit.

For purposes of this section, “the applicable state or county speed limit” shall have the same meaning as in section 291C-105.

(2) Resisting an order to stop a motor vehicle in the first degree is a class C felony.”

SECTION 48. Section 710-1027, Hawaii Revised Statutes, is amended to read as follows:

**“§710-1027 Resisting an order to stop a motor vehicle[-] in the second degree.**

(1) A person commits the offense of resisting an order to stop a motor vehicle in the second degree if the person intentionally fails to obey a direction of a law enforcement officer, acting under color of the law enforcement officer’s official authority, to stop the person’s vehicle.

(2) Resisting an order to stop a motor vehicle in the second degree is a misdemeanor.”

## PART VIII

SECTION 49. The purpose of this part is to amend chapter 712, Hawaii Revised Statutes, regarding offenses against public health and morals, to:

- (1) Move to this chapter the prohibition against furnishing tobacco and electronic smoking devices to minors that currently is found in

chapter 709, Hawaii Revised Statutes, because the offense is more akin to offenses against public health and morals in this chapter than those against the family and against incompetents in chapter 709, Hawaii Revised Statutes;

- (2) Clarify that a person commits the offense of prostitution under section 712-1200(1)(a), Hawaii Revised Statutes, when the person engages in, or agrees or offers to engage in, sexual conduct “in return” for a fee, distinguishing the offense from the offense under section 712-1200(1)(b), Hawaii Revised Statutes, in which the other person pays the fee; and
- (3) Limit the offense of methamphetamine trafficking to instances of manufacturing the drug or distributing it to minors, which merit mandatory prison terms, so that common methamphetamine offenses involving distribution or possession of small amounts may be prosecuted as promotion of dangerous drugs, which gives the sentencing court the discretion to impose probation and drug treatment when appropriate to manage these offenders.

SECTION 50. Chapter 712, Hawaii Revised Statutes, is amended by adding a new section to be appropriately designated and to read as follows:

**“§712- Tobacco products and electronic smoking devices; persons under twenty-one years of age.** (1) It shall be unlawful to sell or furnish a tobacco product in any shape or form or an electronic smoking device to a person under twenty-one years of age.

(2) Signs using the statement, “The sale of tobacco products or electronic smoking devices to persons under twenty-one is prohibited”, shall be posted on or near any vending machine in letters at least one-half inch high and at or near the point of sale of any other location where tobacco products or electronic smoking devices are sold in letters at least one-half inch high.

(3) It shall be unlawful for a person under twenty-one years of age to purchase any tobacco product or electronic smoking device, as those terms are defined in subsection (5). This provision does not apply if a person under the age of twenty-one, with parental authorization, is participating in a controlled purchase as part of a law enforcement activity or a study authorized by the department of health under the supervision of law enforcement to determine the level of incidence of tobacco or electronic smoking devices sales to persons under twenty-one years of age.

(4) Any person who violates subsection (1) or (2), or both, shall be fined \$500 for the first offense. Any subsequent offenses shall subject the person to a fine not less than \$500 nor more than \$2,000. Any person under twenty-one years of age who violates subsection (3) shall be fined \$10 for the first offense. Any subsequent offense shall subject the violator to a fine of \$50, no part of which shall be suspended, or the person shall be required to perform not less than forty-eight hours nor more than seventy-two hours of community service during hours when the person is not employed and is not attending school.

(5) For the purposes of this section:

“Electronic smoking device” means any electronic product that can be used to aerosolize and deliver nicotine or other substances to the person inhaling from the device, including but not limited to an electronic cigarette, electronic cigar, electronic cigarillo, or electronic pipe, and any cartridge or other component of the device or related product.

“Tobacco product” means any product made or derived from tobacco that contains nicotine or other substances and is intended for human consump-

tion or is likely to be consumed, whether smoked, heated, chewed, absorbed, dissolved, inhaled, or ingested by other means. "Tobacco product" includes but is not limited to a cigarette, cigar, pipe tobacco, chewing tobacco, snuff, snus, or an electronic smoking device. "Tobacco product" does not include drugs, devices, or combination products approved for sale by the United States Food and Drug Administration, as those terms are defined in the Federal Food, Drug, and Cosmetic Act."

SECTION 51. Section 712-1200, Hawaii Revised Statutes, is amended by amending subsection (1) to read as follows:

- "(1) A person commits the offense of prostitution if the person:
- (a) Engages in, or agrees or offers to engage in, sexual conduct with another person in return for a fee; or
  - (b) Pays, agrees to pay, or offers to pay a fee to another to engage in sexual conduct."

SECTION 52. Section 712-1240.7, Hawaii Revised Statutes, is amended to read as follows:

~~"[§712-1240.7]~~ **Methamphetamine trafficking [in the first degree].** (1) A person commits the offense of methamphetamine trafficking [~~in the first degree~~] if the person knowingly:

- ~~(a) Possesses one or more preparations, compounds, mixtures, or substances of an aggregate weight of one ounce or more containing methamphetamine or any of its salts, isomers, and salts of isomers;~~
- ~~(b) Distributes one or more preparations, compounds, mixtures, or substances of an aggregate weight of one eighth ounce or more containing methamphetamine or any of its salts, isomers, and salts of isomers;~~
- ~~(c) (a) Distributes methamphetamine in any amount to a minor; or~~
- ~~(d) (b) Manufactures methamphetamine in any amount.~~

(2) Methamphetamine trafficking [~~in the first degree~~] is a class A felony for which the defendant shall be sentenced as provided in subsection (3).

(3) Notwithstanding sections 706-620(2), 706-640, 706-641, 706-659, 706-669, and any other law to the contrary, a person convicted of methamphetamine trafficking [~~in the first degree~~] shall be sentenced to an indeterminate term of imprisonment of twenty years with a mandatory minimum term of imprisonment of not less than two years and not greater than eight years and a fine not to exceed \$20,000,000; provided that:

- (a) If the person has one prior conviction for methamphetamine trafficking pursuant to this section, promoting a dangerous drug in the first degree pursuant to section 712-1241 and methamphetamine was the drug upon which the conviction was predicated, or section 712-1240.8[;] as that section was in effect prior to July 1, 2016, the mandatory minimum term of imprisonment shall be not less than six years, eight months and not greater than thirteen years, four months;
- (b) If the person has two prior convictions for methamphetamine trafficking pursuant to this section, promoting a dangerous drug in the first degree pursuant to section 712-1241 and methamphetamine was the drug upon which the conviction was predicated, or section 712-1240.8, as that section was in effect prior to July 1, 2016, the

- mandatory minimum term of imprisonment shall be not less than thirteen years, four months and not greater than twenty years; or
- (c) If the person has three or more prior convictions for methamphetamine trafficking pursuant to this section, promoting a dangerous drug in the first degree pursuant to section 712-1241 and methamphetamine was the drug upon which the conviction was predicated, or section 712-1240.8[;] as that section was in effect prior to July 1, 2016, the mandatory minimum term of imprisonment shall be twenty years.”

SECTION 53. Section 712-1240.9, Hawaii Revised Statutes, is amended to read as follows:

“~~§712-1240.9~~ **Methamphetamine trafficking; restitution and reimbursement.** When sentencing a defendant convicted of methamphetamine trafficking pursuant to section 712-1240.7 or 712-1240.8[;] as that section was in effect prior to July 1, 2016, the court may order restitution or reimbursement to the State or appropriate county government for the cost incurred for any clean-up associated with the manufacture or distribution of methamphetamine and to any other person injured as a result of the manufacture or distribution of methamphetamine.”

SECTION 54. Section 712-1241, 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 first degree if the person knowingly:

- (a) Possesses one or more preparations, compounds, mixtures, or substances of an aggregate weight of:
  - (i) One ounce or more, containing methamphetamine, heroin, morphine, or cocaine or any of their respective salts, isomers, and salts of isomers; or
  - (ii) One and one-half ounce or more, containing one or more of any of the other dangerous drugs [~~except methamphetamine~~];
- (b) Distributes [~~except for methamphetamine~~]:
  - (i) Twenty-five or more capsules, tablets, ampules, dosage units, or syrettes containing one or more dangerous drugs; or
  - (ii) One or more preparations, compounds, mixtures, or substances of an aggregate weight of:
    - (A) One-eighth ounce or more, containing methamphetamine, heroin, morphine, or cocaine or any of their respective salts, isomers, and salts of isomers; or
    - (B) Three-eighths ounce or more, containing any other dangerous drug;
- (c) Distributes any dangerous drug in any amount to a minor except for methamphetamine; or
- (d) Manufactures a dangerous drug in any amount, except for methamphetamine; provided that this subsection shall not apply to any person registered under section 329-32.”

SECTION 55. 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 the person knowingly:



- (a) Possesses twenty-five or more capsules, tablets, ampules, dosage units, or syrettes, containing one or more dangerous drugs;
- (b) Possesses one or more preparations, compounds, mixtures, or substances of an aggregate weight of:
  - (i) One-eighth ounce or more, containing methamphetamine, heroin, morphine, or cocaine or any of their respective salts, isomers, and salts of isomers; or
  - (ii) One-fourth ounce or more, containing any dangerous drug; or
- (c) Distributes any dangerous drug in any amount[~~;—except for methamphetamine.~~].”

SECTION 56. Section 712-1240.8, Hawaii Revised Statutes, is repealed.

#### PART IX

SECTION 57. The purpose of this part is to amend various provisions of the Hawaii Revised Statutes other than the penal code to:

- (1) Clarify that the offense of inattention to driving involves operating a motor vehicle negligently;
- (2) Simplify the definition of “alcohol” as used in chapter 291E, Hawaii Revised Statutes;
- (3) Clarify that the amount deducted from an inmate’s individual account for victim restitution pursuant to section 353-22.6, Hawaii Revised Statutes, shall be deducted notwithstanding any contrary law;
- (4) Amend the definition of “family or household member” as used in chapter 586, Hawaii Revised Statutes, to be consistent with the amendments made to section 709-906, Hawaii Revised Statutes, by this Act;
- (5) Authorize a pretrial officer of the department of public safety’s intake service center to invoke the assistance of the court to secure a defendant’s appearance before the court when the defendant has intentionally violated the conditions of bail, recognizance, or supervised release;
- (6) Clarify a provision authorizing a court to grant a prosecutor and defense counsel access to records obtained by the adult probation division for the purpose of proceedings pursuant to chapter 704, Hawaii Revised Statutes;
- (7) Reformat for clarity and ease of use an enumerated list of felonies for which criminal charges may be instituted by written information;
- (8) Authorize an offender to request the court to remove from public access all judiciary files and other information related to an expunged offense;
- (9) Provide that chapter 853, Hawaii Revised Statutes, does not apply to certain offenders who previously have been granted a deferred acceptance of no contest plea, to be consistent with treatment of offenders who previously have been granted a deferred acceptance of guilty plea; and
- (10) Make conforming amendments to other statutes to account for amendment or repeal of various statutes by other parts of this Act.

SECTION 58. Section 291-12, Hawaii Revised Statutes, is amended to read as follows:

**“§291-12 Inattention to driving.** Whoever operates any vehicle ~~[without due care or in a manner]~~ negligently as to cause a collision with, or injury or damage to, as the case may be, any person, vehicle or other property shall be fined not more than \$500 or imprisoned not more than thirty days, or both, and may be subject to a surcharge of up to \$100, which shall be deposited into the trauma system special fund.”

SECTION 59. Section 291E-1, Hawaii Revised Statutes, is amended by amending the definition of “alcohol” to read as follows:

~~““Alcohol” means [the product of distillation of any fermented liquid, regardless of whether rectified, whatever may be the origin thereof, and includes ethyl alcohol, lower aliphatic alcohol, and phenol as well as synthetic ethyl alcohol, but not denatured or other alcohol that is considered not potable under the customs laws of the United States.] ethanol or any substance containing ethanol.”~~

SECTION 60. Section 353-10.5, Hawaii Revised Statutes, is amended by amending subsection (d) to read as follows:

~~“(d) As used in this section, “alternative programs” mean programs [which, from time to time,] that~~ are created and funded by legislative appropriation or federal grant naming the department of public safety or one of its operating agencies as the expending agency and ~~[which] that~~ are intended to provide an alternative to incarceration. Alternative programs may include:

- (1) Home detention, curfew using electronic monitoring and surveillance, or both;
- (2) Supervised release, graduated release, furlough, and structured educational or vocational programs;
- ~~[(3) A program of regimental discipline pursuant to section 706-605.5;]~~ and
- ~~[(4)]~~ (3) Similar programs created and designated as alternative programs by the legislature or the director of public safety for inmates who do not pose significant risks to the community.”

SECTION 61. Section 353-22.6, Hawaii Revised Statutes, is amended to read as follows:

**“§353-22.6 Victim restitution.** The director of public safety shall enforce victim restitution orders against all moneys earned by the inmate or deposited or credited to the inmate’s individual account while incarcerated. ~~[The]~~ Notwithstanding any law or order to the contrary, the amount deducted shall be twenty-five per cent of the total of all moneys earned, new deposits, and credits to the inmate’s individual account. The moneys intended for victim restitution shall be deducted monthly and paid to the victim once the amount reaches \$25, or annually, whichever is sooner. This section shall not apply to moneys earned on work furlough pursuant to section 353-17.”

SECTION 62. Section 586-1, Hawaii Revised Statutes, is amended by amending the definition of “family or household member” to read as follows:

~~““Family or household member” [means]:~~

- (1) Means spouses or reciprocal beneficiaries, former spouses or former reciprocal beneficiaries, persons who have a child in common, parents, children, persons related by consanguinity, persons jointly residing or formerly residing in the same dwelling unit, and persons who have or have had a dating relationship~~[-]; and~~

- (2) Does not include those who are, or were, adult roommates or co-habitants only by virtue of an economic or contractual affiliation.”

SECTION 63. Section 804-7.2, Hawaii Revised Statutes, is amended to read as follows:

“§804-7.2 **Violations of conditions of release on bail, recognizance, or supervised release.** (a) Upon verified application by the prosecuting attorney alleging that a defendant has intentionally violated the conditions of release on bail, recognizance, or supervised release, the judicial officer named in section 804-5 shall issue a warrant directing the defendant be arrested and taken forthwith before the court [of] record for hearing.

(b) Upon verified application by a pretrial officer of the intake service center that a defendant has intentionally violated the conditions of release on bail, recognizance, or supervised release, the court may issue an order pertaining to bail to secure the defendant’s appearance before the court or a warrant directing that the defendant be arrested and taken forthwith before the court of record for hearing.

(c) A law enforcement officer having reasonable grounds to believe that a released felony defendant has violated the conditions of release on bail, recognizance, or supervised release, may, where it would be impracticable to secure a warrant, arrest the defendant and take the defendant forthwith before the court of record.”

SECTION 64. Section 806-73, Hawaii Revised Statutes, is amended by amending subsection (b) to read as follows:

“(b) All adult probation records shall be confidential and shall not be deemed to be public records. As used in this section, the term “records” includes but is not limited to all records made by any adult probation officer in the course of performing the probation officer’s official duties. The records, or the content of the records, shall be divulged only as follows:

- (1) A copy of any adult probation case record or of a portion of it, or the case record itself, upon request, may be provided to:
  - (A) An adult probation officer, court officer, social worker of a Hawaii state adult probation unit, or a family court officer who is preparing a report for the courts; or
  - (B) A state or federal criminal justice agency, or state or federal court program that:
    - (i) Is providing supervision of a defendant or offender convicted and sentenced by the courts of Hawaii; or
    - (ii) Is responsible for the preparation of a report for a court;
- (2) The residence address, work address, home telephone number, or work telephone number of a current or former defendant shall be provided only to:
  - (A) A law enforcement officer as defined in section [§]710-1000 to locate the probationer for the purpose of serving a summons or bench warrant in a civil, criminal, or deportation hearing, or for the purpose of a criminal investigation; or
  - (B) A collection agency or licensed attorney contracted by the judiciary to collect any delinquent court-ordered penalties, fines, restitution, sanctions, and court costs pursuant to section 601-17.5;
- (3) A copy of a presentence report or investigative report shall be provided only to:

- (A) The persons or entities named in section 706-604;
  - (B) The Hawaii paroling authority;
  - (C) Any psychiatrist, psychologist, or other treatment practitioner who is treating the defendant pursuant to a court order or parole order for that treatment;
  - (D) The intake service centers;
  - (E) In accordance with applicable law, persons or entities doing research; and
  - (F) Any Hawaii state adult probation officer or adult probation officer of another state or federal jurisdiction who:
    - (i) Is engaged in the supervision of a defendant or offender convicted and sentenced in the courts of Hawaii; or
    - (ii) Is engaged in the preparation of a report for a court regarding a defendant or offender convicted and sentenced in the courts of Hawaii;
- (4) Access to adult probation records by a victim, as defined in section 706-646 to enforce an order filed pursuant to section 706-647, shall be limited to the name and contact information of the defendant's adult probation officer;
- (5) Upon written request, the victim, or the parent or guardian of a minor victim or incapacitated victim, of a defendant who has been placed on probation for an offense under section 580-10(d)(1), 586-4(e), 586-11(a), or 709-906 may be notified by the defendant's probation officer when the probation officer has any information relating to the safety and welfare of the victim;
- (6) Notwithstanding paragraph (3) and upon notice to the defendant, records and information relating to the defendant's risk assessment and need for treatment services; information related to the defendant's past treatment and assessments, with the prior written consent of the defendant for information from a treatment service provider; provided that for any substance abuse records such release shall be subject to title 42 Code of Federal Regulations part 2, relating to the confidentiality of alcohol and drug abuse patient records; and information that has therapeutic or rehabilitative benefit, may be provided to:
- (A) A case management, assessment, or treatment service provider assigned by adult probation to service the defendant; provided that the information shall be given only upon the screening for admission, acceptance, or admittance of the defendant into a program;
  - (B) Correctional case manager, correctional unit manager, and parole officers involved with the defendant's treatment or supervision; and
  - (C) In accordance with applicable law, persons or entities doing research;
- (7) Probation drug test results may be released with prior written consent of a defendant to the defendant's treating physician when test results indicate substance use which may be compromising the defendant's medical care or treatment;
- (8) Records obtained pursuant to section 704-404(8) may be made available as provided in that section;
- ~~(8)~~ (9) Any person, agency, or entity receiving records, or contents of records, pursuant to this subsection shall be subject to the same re-

strictions on disclosure of the records as Hawaii state adult probation offices; and

- (9) (10) Any person who uses the information covered by this subsection for purposes inconsistent with the intent of this subsection or outside of the scope of the person's official duties shall be fined no more than \$500."

SECTION 65. Section 806-83, Hawaii Revised Statutes, is amended by amending subsections (a) to (c) to read as follows:

"(a) Criminal charges may be instituted by written information for a felony when the charge is a class C felony under [section];

- (1) Section 19-3.5 (voter fraud); [section]
- (2) Section 128D-10 (knowing releases); [section]
- (3) Section 132D-14(a)(1), (2)(A), and (3) (relating to penalties for failure to comply with requirements of sections 132D-7, 132D-10, and 132D-16); [section]
- (4) Section 134-7(a) and (b) (ownership or possession prohibited); [section]
- (5) Section 134-8 (ownership, etc., of automatic firearms, silencers, etc., prohibited; penalties); [section]
- (6) Section 134-9 (licenses to carry); [section]
- (7) Section 134-17(a) (relating to false information or evidence concerning psychiatric or criminal history); [section]
- (8) Section 134-24 (place to keep unloaded firearms other than pistols and revolvers); [section]
- (9) Section 134-51 (deadly weapons); [section]
- (10) Section 134-52 (switchblade knives); [section]
- (11) Section 134-53 (butterfly knives); [section]
- (12) Section 188-23 (possession or use of explosives, electrofishing devices, and poisonous substances in state waters prohibited); [section]
- (13) Section 231-34 (attempt to evade or defeat tax); [section]
- (14) Section 231-36 (false and fraudulent statements); [section]
- (15) Section 245-37 (sale or purchase of packages of cigarettes without stamps); [section]
- (16) Section 245-38 (vending unstamped cigarettes); [section]
- (17) Section 245-51 (export and foreign cigarettes prohibited); [section]
- (18) Section 245-52 (alteration of packaging prohibited); [section]
- (19) Section 291C-12.5 (accidents involving substantial bodily injury); [section]
- (20) Section 291E-61.5 (habitually operating a vehicle under the influence of an intoxicant); [section]
- (21) Section 329-41 (prohibited acts B—penalties); [section]
- (22) Section 329-42 (prohibited acts C—penalties); [section]
- (23) Section 329-43.5 (prohibited acts related to drug paraphernalia); [section]
- (24) Section 329C-2 (manufacture, distribution, or possession with intent to distribute an imitation controlled substance to a person under eighteen years of age); [section]
- (25) Section 346-34(d)(2) and (e) (relating to fraud involving food stamps or coupons); [section]
- (26) Section 346-43.5 (medical assistance frauds; penalties); [section]
- (27) Section 383-141 (falsely obtaining benefits, etc.); [section]
- (28) Section 431:2-403(b)(2) (insurance fraud); [section]

- (29) Section 482D-7 (violation of fineness standards and stamping requirements); [~~section~~]
- (30) Section 485A-301 (securities registration requirement); [~~section~~]
- (31) Section 485A-401 (broker-dealer registration requirement and exemptions); [~~section~~]
- (32) Section 485A-402 (agent registration requirement and exemptions); [~~section~~]
- (33) Section 485A-403 (investment adviser registration requirement and exemptions); [~~section~~]
- (34) Section 485A-404 (investment adviser representative registration requirement and exemptions); [~~section~~]
- (35) Section 485A-405 (federal covered investment adviser notice filing requirement); [~~section~~]
- (36) Section 485A-501 (general fraud); [~~section~~]
- (37) Section 485A-502 (prohibited conduct in providing investment advice); [~~section~~]
- (38) Section 707-703 (negligent homicide in the second degree); [~~section~~]
- (39) Section 707-705 (negligent injury in the first degree); [~~section~~]
- (40) Section 707-711 (assault in the second degree); [~~section~~]
- (41) Section 707-713 (reckless endangering in the first degree); [~~section~~]
- (42) Section 707-721 (unlawful imprisonment in the first degree); [~~section~~]
- (43) Section 707-726 (custodial interference in the first degree); [~~section~~]
- (44) Section 707-757 (electronic enticement of a child in the second degree); [~~section~~]
- (45) Section 707-766 (extortion in the second degree); [~~section~~]
- (46) Section 708-811 (burglary in the second degree); [~~section~~]
- (47) Section 708-812.6 (unauthorized entry in a dwelling in the second degree); [~~section~~]
- (48) Section 708-821 (criminal property damage in the second degree); [~~section~~]
- (49) Section 708-831 (theft in the second degree); [~~section~~]
- (50) Section 708-833.5 (shoplifting); [~~section~~]
- (51) Section 708-835.5 (theft of livestock); [~~section~~]
- (52) Section 708-836 (unauthorized control of propelled vehicle); [~~section~~]
- (53) Section 708-836.5 (unauthorized entry into motor vehicle in the first degree); [~~section~~]
- (54) Section 708-839.5 (theft of utility services); [~~section~~]
- (55) Section 708-839.55 (unauthorized possession of confidential personal information); [~~section~~]
- (56) Section 708-839.8 (identity theft in the third degree); [~~section~~]
- (57) Section 708-852 (forgery in the second degree); [~~section~~]
- (58) Section 708-854 (criminal possession of a forgery device); [~~section~~]
- (59) Section 708-858 (suppressing a testamentary or recordable instrument); [~~section~~]
- (60) Section 708-875 (trademark counterfeiting); [~~section~~]
- (61) Section 708-891.6 (computer fraud in the third degree); [~~section~~]
- (62) Section 708-892.6 (computer damage in the third degree); [~~section~~]
- (63) Section 708-895.7 (unauthorized computer access in the third degree); [~~section~~]
- (64) Section 708-8100 (fraudulent use of a credit card); [~~section~~]
- (65) Section 708-8102 (theft, forgery, etc., of credit cards); [~~section~~]
- (66) Section 708-8103 (credit card fraud by a provider of goods or services); [~~section~~]

- (67) Section 708-8104 (possession of unauthorized credit card machinery or incomplete cards); [~~section~~]
  - (68) Section 708-8200 (cable television service fraud in the first degree); [~~section~~]
  - (69) Section 708-8202 (telecommunication service fraud in the first degree); [~~section~~]
  - (70) Section 709-903.5 (endangering the welfare of a minor in the first degree); [~~section~~]
  - (71) Section 709-906 (abuse of family or household members); [~~section~~]
  - (72) Section 710-1016.3 (obtaining a government-issued identification document under false pretenses in the first degree); [~~section~~]
  - (73) Section 710-1016.6 (impersonating a law enforcement officer in the first degree); [~~section~~]
  - (74) Section 710-1017.5 (sale or manufacture of deceptive identification document); [~~section~~]
  - (75) Section 710-1018 (securing the proceeds of an offense); [~~section~~]
  - (76) Section 710-1021 (escape in the second degree); [~~section~~]
  - (77) Section 710-1023 (promoting prison contraband in the second degree); [~~section~~]
  - (78) Section 710-1024 (bail jumping in the first degree); [~~section~~]
  - (79) Section 710-1029 (hindering prosecution in the first degree); [~~section~~]
  - (80) Section 710-1060 (perjury); [~~section~~]
  - (81) Section 710-1072.5 (obstruction of justice); [~~section~~]
  - (82) Section 711-1103 (riot); [~~section~~]
  - (83) Section 711-1109.35 (cruelty to animals by fighting dogs in the second degree); [~~section~~]
  - (84) Section 711-1110.9 (violation of privacy in the first degree); [~~section~~]
  - (85) Section 711-1112 (interference with the operator of a public transit vehicle); [~~section~~]
  - (86) Section 712-1221 (promoting gambling in the first degree); [~~section~~]
  - (87) Section 712-1222.5 (promoting gambling aboard ships); [~~section~~]
  - (88) Section 712-1224 (possession of gambling records in the first degree); [~~section~~]
  - (89) Section 712-1243 (promoting a dangerous drug in the third degree); [~~section~~]
  - (90) Section 712-1246 (promoting a harmful drug in the third degree); [~~section~~]
  - (91) Section 712-1247 (promoting a detrimental drug in the first degree); [~~section~~]
  - (92) Section 712-1249.6(1)(a), (b), or (c) (promoting a controlled substance in, on, or near schools, school vehicles, public parks, or public housing projects or complexes); [~~section~~]
  - (93) Section 803-42 (interception, access, and disclosure of wire, oral, or electronic communications, use of pen register, trap and trace device, and mobile tracking device prohibited); or [~~section~~]
  - (94) Section 846E-9 (failure to comply with covered offender registration requirements).
- (b) Criminal charges may be instituted by written information for a felony when the charge is a class B felony under [~~section~~]:
- (1) Section 134-7(b) (ownership or possession prohibited, when; penalty); [~~section~~]
  - (2) Section 134-23 (place to keep loaded firearms other than pistols and revolvers; penalties); [~~section~~]
  - (3) Section 134-25 (place to keep pistol or revolver; penalty); [~~section~~]

- (4) ~~Section~~ 134-26 (carrying or possessing a loaded firearm on a public highway; penalty); ~~[section]~~
  - (5) ~~Section~~ 329-43.5 (prohibited acts related to drug paraphernalia); ~~[section]~~
  - (6) ~~Section~~ 708-810 (burglary in the first degree); ~~[section]~~
  - (7) ~~Section~~ 708-830.5 (theft in the first degree); ~~[section]~~
  - (8) ~~Section~~ 708-839.7 (identity theft in the second degree); ~~[section]~~
  - (9) ~~Section~~ 708-851 (forgery in the first degree); ~~[section]~~
  - (10) ~~Section~~ 708-891.5 (computer fraud in the second degree); ~~[section]~~
  - (11) ~~Section~~ 708-892.5 (computer damage in the second degree); ~~[section]~~  
~~712-1240.8 (methamphetamine trafficking in the second degree);~~  
~~section]~~
  - (12) ~~Section~~ 712-1242 (promoting a dangerous drug in the second degree); ~~[section]~~
  - (13) ~~Section~~ 712-1245 (promoting a harmful drug in the second degree); or ~~[section]~~
  - (14) ~~Section~~ 712-1249.5 (commercial promotion of marijuana in the second degree).
- (c) Criminal charges may be instituted by written information for a felony when the charge is a felony under ~~[section]~~:
- (1) ~~Section~~ 19-3 (election frauds); ~~[section]~~
  - (2) ~~Section~~ 480-4 (combinations in restraint of trade, price-fixing and limitation of production prohibited); ~~[section]~~
  - (3) ~~Section~~ 480-6 (refusal to deal); or ~~[section]~~
  - (4) ~~Section~~ 480-9 (monopolization).”

SECTION 66. Section 831-3.2, Hawaii Revised Statutes, is amended to read as follows:

“**§831-3.2 Expungement orders.** (a) The attorney general, or the attorney general’s duly authorized representative within the department of the attorney general, upon written application from a person arrested for, or charged with but not convicted of a crime, shall issue an expungement order annulling, canceling, and rescinding the record of arrest; provided that an expungement order shall not be issued:

- (1) In the case of an arrest for a felony or misdemeanor where conviction has not been obtained because of bail forfeiture;
- (2) For a period of five years after arrest or citation in the case of a petty misdemeanor or violation where conviction has not been obtained because of a bail forfeiture;
- (3) In the case of an arrest of any person for any offense where conviction has not been obtained because the person has rendered prosecution impossible by absencing oneself from the jurisdiction;
- (4) In the case of a person acquitted by reason of a mental or physical defect under chapter 704; and
- (5) For a period of one year upon discharge of the defendant and dismissal of the charge against the defendant in the case of a deferred acceptance of guilty plea or nolo contendere plea, in accordance with chapter 853.

Any person entitled to an expungement order hereunder may by written application also request return of all fingerprints or photographs taken in connection with the person’s arrest. The attorney general or the attorney general’s duly authorized representative within the department of the attorney general, within 120 days after receipt of the written application, shall, when so requested,



deliver, or cause to be delivered, all fingerprints or photographs of the person, unless the person has a record of conviction or is a fugitive from justice, in which case the photographs or fingerprints may be retained by the agencies holding such records.

(b) Upon the issuance of the expungement certificate, the person applying for the order shall be treated as not having been arrested in all respects not otherwise provided for in this section.

(c) Upon the issuance of the expungement order, all arrest records pertaining to the arrest ~~[which]~~ that are in the custody or control of any law enforcement agency of the state or any county government, and ~~[which]~~ that are capable of being forwarded to the attorney general without affecting other records not pertaining to the arrest, shall be so forwarded for placement of the arrest records in a confidential file.

(d) Records filed under subsection (c) shall not be divulged except upon inquiry by:

- (1) A court of law or an agency thereof which is preparing a presentence investigation for the court;
- (2) An agency of the federal or state government which is considering the subject person for a position immediately and directly affecting the national or state security; or
- (3) A law enforcement agency acting within the scope of their duties.

Response to any other inquiry shall not be different from responses made about persons who have no arrest records.

(e) The attorney general or the attorney general's duly authorized representative within the department of the attorney general shall issue to the person for whom an expungement order has been entered, a certificate stating that the order has been issued and that its effect is to annul the record of a specific arrest. The certificate shall authorize the person to state, in response to any question or inquiry, whether or not under oath, that the person has no record regarding the specific arrest. Such a statement shall not make the person subject to any action for perjury, civil suit, discharge from employment, or any other adverse action.

(f) Any person for whom an expungement order has been entered may request in writing that the court seal or otherwise remove all judiciary files and other information pertaining to the applicable arrest or case from the judiciary's publicly accessible electronic databases. The court shall make good faith diligent efforts to seal or otherwise remove the applicable files and information within a reasonable time.

~~(f)~~ (g) The meaning of the following terms as used in this section shall be as indicated:

"Arrest record" means any existing photographic and fingerprint cards relating to the arrest.

"Conviction" means a final determination of guilt whether by plea of the accused in open court, by verdict of the jury or by decision of the court.

~~(g)~~ (h) The attorney general shall adopt rules pursuant to chapter 91 necessary for the purpose of this section.

~~(h)~~ (i) Nothing in this section shall affect the compilation of crime statistics or information stored or disseminated as provided in chapter 846."

SECTION 67. Section 846F-3, Hawaii Revised Statutes, is amended by amending subsection (b) to read as follows:

"(b) When a defendant is also ordered to pay a fine, make restitution, pay a crime victim compensation fee, or pay other fees in addition to the internet

crimes against children fee, payments by the defendant shall be made in the order of priority established under section [706-648:] 706-\_\_\_\_\_.”

SECTION 68. Section 853-4, Hawaii Revised Statutes, is amended by amending subsection (a) to read as follows:

- “(a) This chapter shall not apply when:
- (1) The offense charged involves the intentional, knowing, reckless, or negligent killing of another person;
  - (2) The offense charged is:
    - (A) A felony that involves the intentional, knowing, or reckless bodily injury, substantial bodily injury, or serious bodily injury of another person; or
    - (B) A misdemeanor or petty misdemeanor that carries a mandatory minimum sentence and that involves the intentional, knowing, or reckless bodily injury, substantial bodily injury, or serious bodily injury of another person;
  - (3) The offense charged involves a conspiracy or solicitation to intentionally, knowingly, or recklessly kill another person or to cause serious bodily injury to another person;
  - (4) The offense charged is a class A felony;
  - (5) The offense charged is nonprobationable;
  - (6) The defendant has been convicted of any offense defined as a felony by the Hawaii Penal Code or has been convicted for any conduct that if perpetrated in this State would be punishable as a felony;
  - (7) The defendant is found to be a law violator or delinquent child for the commission of any offense defined as a felony by the Hawaii Penal Code or for any conduct that if perpetrated in this State would constitute a felony;
  - (8) The defendant has a prior conviction for a felony committed in any state, federal, or foreign jurisdiction;
  - (9) A firearm was used in the commission of the offense charged;
  - (10) The defendant is charged with the distribution of a dangerous, harmful, or detrimental drug to a minor;
  - (11) The defendant has been charged with a felony offense and has been previously granted deferred acceptance of guilty plea ~~status~~ or no contest plea for a prior offense, regardless of whether the period of deferral has already expired;
  - (12) The defendant has been charged with a misdemeanor offense and has been previously granted deferred acceptance of guilty plea ~~status~~ or no contest plea for a prior felony, misdemeanor, or petty misdemeanor for which the period of deferral has not yet expired;
  - (13) The offense charged is:
    - (A) Escape in the first degree;
    - (B) Escape in the second degree;
    - (C) Promoting prison contraband in the first degree;
    - (D) Promoting prison contraband in the second degree;
    - (E) Bail jumping in the first degree;
    - (F) Bail jumping in the second degree;
    - (G) Bribery;
    - (H) Bribery of or by a witness;
    - (I) Intimidating a witness;
    - (J) Bribery of or by a juror;
    - (K) Intimidating a juror;
    - (L) Jury tampering;

- (M) Promoting prostitution in the second degree;
  - (N) Abuse of family or household member;
  - (O) Sexual assault in the second degree;
  - (P) Sexual assault in the third degree;
  - (Q) A violation of an order issued pursuant to chapter 586;
  - (R) Promoting child abuse in the second degree;
  - (S) Promoting child abuse in the third degree;
  - (T) Electronic enticement of a child in the first degree;
  - (U) Electronic enticement of a child in the second degree;
  - (V) Prostitution pursuant to section 712-1200(1)(b);
  - (W) Street solicitation of prostitution under section 712-1207(1)(b);
  - (X) Solicitation of prostitution near schools or public parks under section 712-1209;
  - (Y) Habitual solicitation of prostitution under section 712-1209.5; or
  - (Z) Solicitation of a minor for prostitution under section 712-1209.1;
- (14) The defendant has been charged with:
- (A) Knowingly or intentionally falsifying any report required under chapter 11, part XIII with the intent to circumvent the law or deceive the campaign spending commission; or
  - (B) Violating section 11-352 or 11-353; or
- (15) The defendant holds a commercial driver's license and has been charged with violating a traffic control law, other than a parking law, in connection with the operation of any type of motor vehicle.”

#### PART X

SECTION 69. Act 139, Session Laws of Hawaii 2012, as amended by section 2 of Act 67, Session Laws of Hawaii 2013, is amended by amending section 14 to read as follows:

“SECTION 14. This Act shall take effect on July 1, 2012; provided that:

- (1) Section 3 shall take effect on January 1, 2013;
- (2) Section 7 shall take effect on July 1, 2012, for any individual on parole supervision on or after July 1, 2012;
- (3) Section 8 shall take effect on July 1, 2012, and shall be applicable to individuals committing an offense on or after that date; and
- (4) Sections 3, 7, 8, ~~[10,]~~ and 11 shall be repealed on July 1, 2018, and sections 353-10, 353-66, 706-670(1), ~~[353-22-6,]~~ and 353-69, Hawaii Revised Statutes, shall be reenacted in the form ~~[as]~~ in which they read on June 30, 2012.”

SECTION 70. This Act does not affect rights and duties that matured, penalties that were incurred, and proceedings that were begun before its effective date; provided that sections 54, 55, and 56 shall apply to offenses committed before the effective date of this Act:

- (1) But not yet charged as of its effective date;
- (2) Originally charged as a violation of section 712-1240.7 or 712-1240.8, Hawaii Revised Statutes, where the defendant:
  - (a) Has not yet been placed in jeopardy or convicted on a plea or verdict; and
  - (b) Waives any claim of denial of speedy trial rights for the period elapsing between the date of filing of the original charge and the date of filing of the new charge under this Act;

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- (3) Originally charged as a violation of section 712-1240.7 or 712-1240.8, Hawaii Revised Statutes, for which the defendant has been convicted on a plea or verdict, but not yet sentenced, in which case the defendant shall be sentenced pursuant to this Act; and
- (4) Originally charged as a violation of section 712-1240.7 or 712-1240.8, Hawaii Revised Statutes, for which the defendant has been convicted on a plea or verdict and sentenced but for which no final judgment on appeal has been entered, in which case the appellate court shall either:
  - (a) Remand the case for sentencing pursuant to this Act if the judgment is affirmed on appeal or if the sentence is vacated; or
  - (b) Remand the case for further proceedings pursuant to this Act if the judgment is reversed and remanded for further proceedings.

SECTION 71. Statutory material to be repealed is bracketed and stricken. New statutory material is underscored.<sup>2</sup>

SECTION 72. This Act shall take effect on July 1, 2016; provided that:

- (1) Sections 5, 9, and 12 shall take effect on July 1, 2018; and
- (2) Section 64 shall take effect on June 30, 2016 and the amendments made to section 806-73(b), Hawaii Revised Statutes, in section 64 of this Act shall not be repealed when section 806-73(b), Hawaii Revised Statutes, is repealed and reenacted on July 1, 2016, pursuant to Act 119, Session Laws of Hawaii 2011.

(Became law on July 11, 2016, without the governor's signature, pursuant to Art. III, §16, State Constitution.)

**Notes**

1. So in original.
2. Edited pursuant to HRS §23G-16.5.