HAWAII PENAL CODE

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FIFTH ~~FOURTEENTH~~ LEGISLATURE, ~~XX~~ 1970
STATE OF HAWAII

S.R. NO. 340

SENATE RESOLUTION

REQUESTING THE LEGISLATIVE REFERENCE BUREAU TO REVIEW AND ANALYZE S.B. NO. 1739-70, RELATING TO THE HAWAII PENAL CODE AND TO REPORT ITS FINDINGS AND RECOMMENDATIONS TO THE SIXTH STATE LEGISLATURE.

WHEREAS, the proposed draft of the Hawaii Penal Code submitted by the Judicial Council of Hawaii, has taken its Committee on Penal Law Revision over three years in the preparation of said code; and

WHEREAS, the proposed draft was introduced in the Senate as S.B. No. 1739-70 on March 5, 1970, the 31st day of this session; and

WHEREAS, the proposed code purports to remove many archaic, unnecessary laws and penalties, and change comprehensively the existing criminal law; and

WHEREAS, for the legislature to pass upon said code it must first familiarize itself with the contents of said proposed code through an adequate review and analysis; and

WHEREAS, the legislature did not have the opportunity to adequately review and consider the proposed draft of the Hawaii Penal Code; and

WHEREAS, a comprehensive analysis of the changes proposed in said code is considered necessary for the legislature in passing on the proposed penal code; now, therefore,

BE IT RESOLVED by the Senate of the Fifth Legislature of the State of Hawaii, Regular Session of 1970, that the Legislative Reference Bureau be requested to make a comprehensive review and analysis of said proposed penal code, and submit its findings and recommendations to the Senate no later than twenty days prior to the convening of the Sixth Legislature of the State of Hawaii, Regular Session of 1971; and

BE IT FURTHER RESOLVED that a duly certified copy of this Resolution be transmitted to the Legislative Reference Bureau.

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INTRODUCTION

The first systematic restatement of Hawaii's criminal law was presented to the State Legislature in 1970 for enactment as the Hawaii Penal Code (S.B. No. 1739-70 and H.B. No. 1896). The proposal is a comprehensive, integrated codification of most of the State's criminal law. Although the 1970 bills to enact the Code provided for a delayed effective date--July 1, 1971--it was decided to defer legislative action on the Code so that there might be adequate time for studying it. Obviously, a document of more than three hundred and fifty pages, even if it merely redefines criminal offenses, eliminates inconsistencies, modernizes language, and rearranges provisions logically, is a complicated challenge for legislators to study and comprehend. More important, the Hawaii Penal Code (Proposed Draft) includes some very significant changes in the substantive criminal law of Hawaii; these matters of import deserve full consideration, not only by the members of the Legislature, but also by the general public.

This Report is not intended to paraphrase the published Hawaii Penal Code (Proposed Draft) which contains, for each provision, commentaries with elaborate explanations, background information, comparison materials, experts' advice, and cross references. The extensive section-by-section commentaries also include analyses of the Code's conformance and additions to, and departures from, existing Hawaii statutory and case law.

Certain information and discussions, however, may be useful for those who are interested in the proposed codification of Hawaii's criminal law. Chapter I relates the circumstances of the Code preparation and a generalized summary of its contents, with attention called to some innovative features of the Code.

Chapter II surveys briefly the progress of penal law revision and codification among the states and at the federal level, and, in looking at the larger national picture, discusses the Hawaii Penal Code (Proposed Draft) in relation to the findings and recommendations of recent notable presidential and national commissions that have dealt with crime, civil disorder, urban problems, and violence.

Finally Chapter III suggests appropriate amendments to the repeal and recodification provisions of the Code.

Chapter I

THE PROPOSED HAWAII PENAL CODE: AN OVERVIEW[1]

In 1966, pursuant to a legislative request, the Judicial Council of Hawaii undertook the task of preparing for consideration by the legislature a proposed revision of the penal laws of the State of Hawaii.

The Committee on Penal Law Revision which guided and oversaw the preparation of the Code was composed of individuals representing many areas of expertness and concern in the criminal law. Judge Masato Doi, who for three years presided over the criminal calendar, chaired the Committee. The other members of the Committee were: J. Russell Cades, an attorney in private practice; Arthur A. Hoke, former State Parole Administrator; Mack H. Hamada, former First Deputy Prosecutor of the Honolulu Prosecutor's Office; former Judge Samuel P. King, who before his retirement from the bench had presided over the criminal calendar and who, at the time of his retirement, was judge of the Family Court; Patricia K. Putman, Attorney with the Legislative Reference Bureau; Allan S. Saunders, former Professor of Political Science at the University of Hawaii; and Myer C. Symonds, an attorney with great experience in the defense of criminal cases. The staff consisted of Frank B. Baldwin, III, formerly of the University of Pennsylvania Law School and the School of Law at the University of California at Davis, California, who served as Project Director, and Don Jeffrey Gelber, who served as Reporter.

The proposed Code is the work product that emerged after two and one-half years of research, drafting, review, and redrafting.

It represents, as an integrated code, the consensus recommendation of the Committee.

This presentation is not in any way intended as an authoritative summary or explanation of the Code or any of its parts but is merely an overview of the entire Code focusing on certain highlights that might be of interest to legislators. The Hawaii Penal Code (Proposed Draft) remains the authoritative recommendation of the Judical Council and the Committee. For a more complete explanation of any given area of the Code, the reader is referred to the statutory text and the commentary in the Code. While the commentary may at some points seem elaborate, it has been prepared in the hope that it will not only aid individual legislators in understanding the Code but will also aid members of the bar and bench in applying the Code.

Organization of the Code

The existing Hawaii penal law stems largely from the Penal Code of 1869 which, as amended from time to time, is codified in the Hawaii Revised Statutes. The organization of Hawaii's present penal laws defies rational explanation. Substantive offenses are codified in a more or less alphabetical fashion, regardless of whether the offenses are in any way related one to the other, a non-system that has led to redundancy and inconsistency in many instances. On the other hand, many important areas of the law have never been codified but have been left to case-by-case development. The common-law development of uncodified doctrines has at best been sporadic.

The proposed Code presents an entirely new organization of the penal law. The first six chapters present the general part of the penal law--those principles and rules which have or may have application regardless of the specific type of offense involved in

a given prosecution. Chapters 7 to 12 deal with substantive offenses. The division of the Code into enumerated chapters is analytical, not alphabetical. Thus, in Chapters 7 to 12, each chapter deals with related offenses against a certain type of socially protected interest. Chapter 7 deals with offenses against the person (for example, murder, manslaughter, assault, kidnapping, etc.); Chapter 8 deals with offenses against property rights (for example, burglary, trespass, property damage, theft, property, etc.); and so on for the remaining chapters.

The organization of each chapter is also analytical in its approach. Thus, Chapter 8 dealing with offenses against property rights, is divided into eight parts. Part I provides rules relating to valuation and definitions, which have general application throughout the entire chapter. Part II deals with burglary and other offenses of intrusion, such as possession of burglar's tools and trespass. Part III, dealing with damage to property, covers various offenses relating to damage to and tampering with property. Part IV provides a unified treatment of theft and offenses relating to possession.

It should be noted that the system employed for numbering the chapters and the various sections permits additions or deletions of sections without altering the overall structure of the Code.

Chapter 1 - Preliminary Provisions

Chapter 1 provides certain preliminary provisions necessary to comprehensive treatment of the penal law. The effective date of the Code is deferred to give the legislature an opportunity in the regular session following enactment to make whatever corrective amendments, if any, that are needed. The existing body of laws is specifically continued in force until the effective date. Generally the Code, even after its effective date, will not apply

to prosecutions pending or commenced prior to the effective date. However, certain procedural rules and defenses in the Code are made available to defendants in some instances to provide for equitable treatment.

The chapter continues the existing rule against common-law development of penal offenses. The rule of strict statutory construction in criminal cases is abolished, and the Code specifically provides that its provisions must be construed according to the fair import of their terms. This follows the suggestion of the Model Penal Code and similar rules in a number of states, including California, Arizona, Michigan, Minnesota, Montana, Nevada, New York, North Dakota, Oregon, South Dakota, and Utah. In this regard, although the statutory text constitutes the authoritative statement of the law, the Code provides that the commentary may be used in construing provisions of the Code in the event of ambiguity. The rule of strict construction is no substitute for careful drafting and wise judicial application; it is resorted to more often by defense attorneys in formulating spurious arguments than by courts in formulating decisions and opinions.

Section 107 of the Code divides all offenses into four grades--felony, misdemeanor, petty misdemeanor, and violation. Felonies are further divided into three classes: class A, class B, and class C. Sentencing for each grade and class of offense is handled under Chapter 6, which is discussed below.

New time limitations on prosecutions are provided by Section 108. Prosecutions for murder may be commenced any time. Other prosecutions may be commenced within the following time limits: class A felonies, 6 years; class B and C felonies, 3 years; misdemeanors, 2 years; petty misdemeanors and violations, 1 year. Provision is made for an extension of time in cases involving

circumstances likely to conceal the wrong-doing in spite of diligence on the part of the prosecutor.

Chapter 1 also contains some technical sections designed to insure that a defendant will not incur multiple sentences and multiple prosecutions for a single course of conduct. The limited constitutional concept of double jeopardy is not sufficient for this purpose. The chapter also provides specific codification of law on the burden of proof as it relates to both the facts which the prosecution must prove and the facts constituting an affirmative defense which the defendant must prove.

Finally, the chapter provides a procedure for forfeiture whenever forfeiture is declared by the penal law. The procedure provided is comprehensive and designed to serve when any specific forfeiture is declared by the penal law. The procedural section does not declare any forfeiture per se. Present law deals with forfeiture on an ad hoc basis providing different but similar procedures for gambling devices, gambling proceeds, bribery proceeds, and other forfeited items.

Chapter 2 - General Principles of Penal Liability

Chapter 2 deals with principles generally applicable to any prosecution. Many principles of the common law which are no longer subject to dispute have been codified.

Basically, the criminal law has always been concerned not only with man's conduct but also with his state of mind when he engages in conduct.

The chapter codifies the generally accepted principle that penal liability must be based on voluntary action coupled with a culpable state of mind. Perhaps one of the most extensive changes from existing law which the Code provides, based on the suggestion

of the American Law Institute's Model Penal Code, is the elimination of the wide diversity of words and phrases used to denote or connote the state of mind sufficient to impose penal liability. Instead of using a wide variety of words to describe varying degress of culpability, the Code limits itself to four states of mind: acting "intentionally", "knowingly", "recklessly", and "negligently". Each state of mind, as it applies to each element of an offense, is set forth in Section 206. The elements of an offense, previously undefined in the law, are set forth in Section 205.

The Code also sets forth rules relating to the interpretation and implementation of offenses defined in other areas of the Hawaii Revised Statutes. For example, although offenses of strict criminal liability, i.e., offenses not requiring any culpable state of mind on the part of the actor, are disfavored in the Hawaii Penal Code, accommodation is made where the legislature has clearly provided for the imposition of such liability.

Chapter 2 deals with and is intended to resolve some knotty problems relating to causation when causing a particular result is an element of a particular crime.

The Code is Sections 218 to 220 codifies generally accepted rules relating to ignorance or mistake as a defense to a particular prosecution. One innovation occurs in Section 220 where the Code provides that a mistake as to the illegality of certain conduct constitutes an affirmative defense when based upon reasonable reliance upon official conduct.

Sections 221 to 226 resolve many problems dealing with accomplice liability. The basic thrust of these sections is to focus on each defendant's individual involvement and to avoid the precarious results which sometimes occur under the archaic language of existing statutes.

One of the more interesting innovations presented by Chapter 2 is Section 236 which gives the courts the power to dismiss a

prosecution if the defendant's conduct (1) was within a customary license or tolerance, (2) did not actually cause or threaten the evil sought to be prevented by the law defining the offense, or (3) presented such other extenuating circumstances that it could not reasonably be regarded as having been envisioned by the legislature in forbidding the offense. The court, however, may not dismiss a prosecution under this last ground unless it files a written statement of its reasons.

Chapter 3 - General Principles of Justification

Chapter 3 codifies a whole body of law largely missing from existing penal law. Justification deals with that body of law which excuses certain conduct or results under specified circumstances notwithstanding the fact that the conduct or result might otherwise be proscribed. Thus one might be permitted under Chapter 3 to intentionally kill another person in his own self-defense, in the defense of another person, or in course of law enforcement, depending on the circumstances presented by each individual case.

Generally speaking, Chapter 3 attempts to eliminate much of the confused thinking that has resulted in sporadic case-by-case development of the common law in the area of justification as a defense. The chapter provides codified rules on justification in each of eight areas: (1) choice of evils, (2) execution of public duty, (3) use of force in self-protection, (4) use of force in the protection of other persons, (5) use of force in the protection of property, (6) use of force in law enforcement, (7) use of force to prevent suicide or the commission of a crime, and (8) use of force by persons with special responsibility for care, discipline, or safety of others. Moreover, when relevant, the chapter seeks to distinguish between the use of force and the use of deadly force and to provide rational principles for the use of each type of force depending on the varying contexts in which the issue of justification may arise.

Chapter 4 - Penal Responsibility and Fitness to Proceed

Chapter 4 is an attempt to bring penal law relating to competence and responsibility into step with 20th century scientific and medical knowledge.

To a large extent Hawaii has previously codified the M'Naghten rule relating to penal responsibility. That rule focused on the defendant's ability to know the quality of his acts and to know their wrongfulness. No purpose would be served by here dissecting the rule. It has been condemned by the Supreme Court of Hawaii in a recent opinion in which the court deferred to the legislature on the matter of reform.[2] The Hawaii Supreme Court is not alone in its condemnation. Many federal courts have implemented a rule substantially similar to the rule here proposed as a matter of case law development without waiting for Congress to handle the matter legislatively.

Section 400 of the Code provides that:

> A person is not responsible, under this Code, for conduct if at the time of the conduct as a result of physical or mental disease, disorder, or defect he lacks substantial capacity either to appreciate the wrongfulness of his conduct or to conform his conduct to the requirements of law.

Basically, this standard is derived from the American Law Institute's Model Penal Code, which has been accepted in general by many states presently revising their criminal law and by the Hawaii Supreme Court, by way of dictum, in the same case which condemns the existing standard.

The Code's formulation treats physical disease, disorder, or defect on the same par with mental disease, disorder, or defect insofar as it impairs the person's capability to appreciate the

wrongfulness of his conduct or to conform his conduct to the requirements of law. The formulation which the Code provides is intended to take into account those diseases, disorders, and defects such as arteriosclerosis which may affect behavior but which cannot candidly be described simply as a mental disorder. For a complete discussion of the problem, the reader is referred to Part I of the commentary on Section 400. Chapter 4 also provides a procedure for determining penal responsibility or fitness to proceed and for determining what disposition ought to be made of a defendant acquitted on the ground that he is not penally responsible.

Many sections in Chapter 4 incorporate ideas suggested by legislation previously proposed by the Department of Health.

Chapter 5 - Inchoate Crimes

Chapter 5 deals with behavior that is anticipatory to or in preparation for the commission of a substantive offense. The chapter is divided into four parts, the first three dealing with the three modes of inchoate criminal behavior: attempts, solicitation, and conspiracies. The fourth part deals with renunciation by the defendant of his inchoate criminal behavior and with the further conduct on his part which will afford him an affirmative defense. Part IV also deals with the technical problem of eliminating multiple convictions based on the same course of inchoate behavior.

The area of inchoate crimes is sometimes thought of as one of the more difficult areas of criminal law. In this overview, no purpose would be served in duplicating the text and commentary by an elaboration of some of the knotty problems which Chapter 5 resolves. However, some interesting provisions deserve notice.

First, Sections 511 and 523 specifically provide that a defendant is not afforded a defense based on the irresponsibility or incapacity of the party whom he solicits or with whom he conspires

to achieve a criminal objective. Secondly, Sections 502, 512, and 526 provide that sentencing for attempts, solicitation, and conspiracy will be related to the substantive offense which is the object of the inchoate behavior. Generally, attempts and conspiracies are treated as the same grade and class as the substative offense, and solicitations are treated as one grade or class, as the case may be, less than the offense solicited. Thirdly, Part III of Chapter 5 contains many provisions designed to eliminate the abuses which have demonstrated themselves in conspiracy prosecutions in the past. Present Hawaii law does not require that the prosecution prove than an overt act was committed in pursuance of the conspiracy. Section 520 adds this requirement. Section 520 limits the scope of the conspiratorial relationship so that a participant in organized criminal behavior is not linked by means of an attenuated chain of events to actions of which he has no knowledge.

Chapter 6 - Disposition of Convicted Defendants

Chapter 6 sets forth the authorized dispositions which the court may order upon the conviction of a defendant. Part I provides for a presentence investigation and report, a presentence psychiatric and medical examination, and an opportunity for the defendant to be heard on the presentence report.

Section 605 states the authorized disposition of convicted defendants and sets forth the combinations of suspension of sentence or probation, fine, and imprisonment that may be utilized by the court. Section 606 authorizes a special sentence for murder, allowing the court to impose either life or 20-years imprisonment. The court's power to suspend sentence or order probation or fine is limited in this one case.

Section 607 provides an innovation allowing the defendant to admit other crimes in open court and ask that they be taken into

consideration at the time of sentencing. If the other crimes are taken into consideration and sentence is imposed, service of that sentence allows the defendant to start afresh upon his discharge.

Part II provides for suspension of sentence and probation as one form of disposition of convicted persons. Generally, the Code favors withholding a sentence of imprisonment unless circumstances make imprisonment necessary. Whenever it is proposed that the conditions of suspension of sentence or probation be changed, or that suspension of sentence or probation be revoked, the convicted person is afforded notice and an opportunity to be heard on these issues.

Part III of Chapter 6 sets forth the authorized fines, the criteria for imposing fines, and the consequences for nonpayment of fines. It should be noted that the Code generally disfavors the imposition of fines as the only sentence upon conviction. Moreover, as a sanction in addition to other penalties imposed, a fine would be imposed only in accordance with the criteria provided in Section 641.

Part IV of Chapter 6 deals with imprisonment. The overall approach of the Code's treatment of imprisonment is to distinguish between the ordinary term that would suffice in most cases where imprisonment is imposed, and the extended term which may be required in exceptional cases. A sentence designed to serve the worst type of defendant ought not to be imposed in the vast majority of cases. When presently authorized sentences are combined with the statutory policy of indeterminant sentencing (i.e., imposing the maximum term of imprisonment and leaving the determination of future parole with the Board of Paroles and Pardons), grossly disproportionate sentences are imposed in the vast majority of cases. Chapter 6 provides that ordinary terms for felonies are as follows: class A felony, 20 years; class B felony, 10 years; and class C felony, 5 years. When the court makes a finding that, pursuant to Section

662, the convicted person is a persistent offender, professional criminal, dangerous person, or multiple offender, the court may impose an extended term as follows: class A felony, life; class B felony, 20 years; and class C felony, 10 years.

The policy of indeterminant sentencing of persons convicted of felonies is continued under the Code. It should be noted that this policy is generally favored by authorities in the field, and Hawaii is regarded as one of the more enlightened jurisdictions.

A person convicted of a misdemeanor may be sentenced to imprisonment for a definite term not to exceed one year, and a person convicted of a petty misdemeanor may be sentenced to a definite term not to exceed 30 days.

Section 667 provides for specialized treatment for young adult defendants, and in a case of young adult defendants convicted of felonies, for a special or limited term of imprisonment. However, special findings are required before the court may propose this term.

The procedure for fixing the minimum term of imprisonment and the procedure for determining parole are codified, and the prisoner is afforded notice of each hearing, opportunity to participate and be heard, and the opportunity to be assisted by counsel.

Chapter 7 - Offenses Against the Person

Chapter 7 begins the Code's consideration of substantive offenses. The chapter is divided into five parts, the first providing definitions of general application throughout the chapter and the remaining parts dealing with specific offenses.

Part II deals with criminal homicide -- the offenses of murder, manslaughter, and negligent homicide. The Code dispenses with dividing the offense of murder into two degrees. The division of the offense of murder into first and second degrees is a carry-over from the era when the death penalty was authorized. That

penalty has been abolished, and there is no reason to divide essentially the same type of conduct and state of mind into separate offenses. The law presently requires that the trier of fact (be it judge or jury) distinguish between causing death with "deliberate premeditated malice aforethought" and causing death with "malice aforethought" in determining whether an accused has committed first or second degree murder. The mental gymnastics required of the fact finder might have served some purpose when the distinction might have determined whether the accused lived or died. But, today, with the death penalty abolished, and in view of the Code's reform of authorized sentences, such a distinction would serve no useful purpose. Indeed, attempts to explain the distinction to the jury lead to insurmountable problems.

Under the Code, murder is defined as intentionally or knowingly causing the death of another. Dispensed with are the archaic phrases "deliberate", "premeditated", and "malice aforethought". The simplified definition of murder should go a long way toward avoiding the confusion now present in murder prosecutions.

Manslaughter involves (1) recklessly causing the death of another, or (2) intentionally causing another to commit suicide, or (3) intentionally causing the death of another under the influence of extreme mental or emotional disturbance for which there is a reasonable explanation.

Negligent homicide is expanded under the Code from its present formulation (dealing only with death caused by motor vehicle) to an offense of general application and is made a misdemeanor.

Part III deals with criminal assault and related offenses. Criminal assaults are divided into three degrees, depending upon the state of mind of the actor (i.e., whether he acted intentionally, knowingly, recklessly, or negligently), the result caused (i.e. whether the actor caused serious bodily injury or bodily injury

which is not serious), and the instrumentality used (i.e. whether or not the actor used a dangerous instrument in the assault). A quick reference chart analysis of the three degrees of criminal assault is found at page 184 of the Code. The intent of the Code is to impose some order on a vast array of present statutes and at the same time to provide comprehensive coverage. Three offenses related to assault, reckless endangering in the first and second degrees and terroristic threatening, are additions to the present law and are designed to provide greater coverage in this area.

Part IV deals with kidnapping and related offenses. The basic thrust of the Code in this area is to provide definitions of various types of offenses related to interference with personal liberty and to provide penalties which differentiate according to the aggravations presented. Among the innovations are:

1. The reduction of kidnapping to a class B felony if the defendant voluntarily releases the victim, alive and not suffering from serious bodily injury, in a safe place prior to trial; and

2. A specific definition for criminal coercion which is not solely related to problems of theft by extortion.

Part V deals with sexual offenses. The Code eliminates as a criminal offense the sexual behavior of consenting sexually mature persons in private. Eliminated from the law are such offenses as fornication and adultery. As the Model Penal Code draftsmen pointed out:

> The Code does not attempt to use the power of the state to enforce purely moral or religious standards. We deem it inappropriate for the government to attempt to control behavior that has no substantial significance except as to the morality of the actor. Such matters

are best left to religious, educational and other social influences.

The impossibility of even-handed enforcement of such offenses raises the specter of discriminatory prosecution unrelated to the merits. Moreover, as the proposed Code's commentary notes:

> [A]vailable research would tend to indicate that, with respect to fornication and adultery, at one time or another a majority of the American population breaches the sexual standards which the penal law purports to enforce. This is significant for two reasons: (1) It demonstrates that the penal law does not reflect society's actual conception of harmful behavior. (2) In addition to the problem of discriminatory enforcement, the number of offenders makes anything approaching effective enforcement impossible. The impossibility of an even-handed enforcement tends to bring the penal law in general, not merely the unenforced offense, into disrespect.

Rape is divided into three degrees. A distinction, for the purpose of sentencing only, is made between the case of sexual aggression against a woman who had previously permitted the defendant sexual liberties and one who has not.

Sodomy is also divided into three degrees, and the offense is based on forcible deviate sexual intercourse. The structure of the sodomy offenses is substantially similar to the rape offenses.

To cover problems of forced sexual contact and sexual imposition on the young, not amounting to rape or sodomy, the Code introduces two offenses based on sexual abuse.

Chapter 8 - Offenses Against Property Rights

Chapter 8 is intended to provide comprehensive and orderly treatment of the various array of offenses against varying types

of property rights. No summary treatment can, of course, give adequate attention to all the changes effected by this chapter.

Burglary and trespass have been redefined and, in each case, the Code focuses attention on the extent to which the intrusion is likely to result in personal danger or alarm. The greater the chance that personal danger or alarm is likely to result, the more severe is the authorized penalty. The Code eliminates such artificial distinctions as whether the burglary occurs during the day or at night.

Part III provides a single integrated treatment of all forms of physical property damage. Dispensed with are individual offenses, such as arson, that are dependent upon the destructive means employed. Criminal property damage is divided into four degrees depending upon (1) whether the damage to the property exposes another person to death or bodily injury, (2) whether the means employed presents a risk of widespread damage to persons or property, (3) the value of the property damaged, and (4) the state of mind of the actor (i.e., whether he acted intentionally or merely recklessly) when he engaged in the conduct. Additional specific offenses are provided to cover interference with the use and enjoyment of property by means of criminal tampering, noxious substances, and littering. In most cases, the latter offenses are treated as petty misdemeanors.

Part IV provides for a single unified treatment of theft. At common-law a variety of offenses existed to cover various forms of taking or appropriating the property of another. The common-law, piecemeal development was subsequently enacted and codified in many states, including Hawaii. Section 830 provides a comprehensive

definition of theft, and Sections 831 to 833 provide for three degrees of theft depending largely on the amount involved.

It should be noted that theft from the person or theft of a firearm, because of dangers involved, are classified as theft in the first degree notwithstanding the fact that the value of the article taken from the person or the value of the firearm might be less than $500, which is otherwise the lower limit of theft in the first degree.

Section 836 enacts a separate offense for unauthorized operation of a propelled vehicle. This type of provision is sometimes called a "joy riding" statute and permits conviction of misdemeanor when the taking of a motor vehicle is not a permanent taking.

Part V provides three degrees of robbery, depending upon the aggravated circumstances present, rather than just two degrees as in the present law.

Part VI deals with forgery and related offenses. In this regard it should be noted that the Code adds some new offenses, such as criminal possession of a forgery device, criminal simulation (falsification in relating to objects other than writings), obtaining signatures by deception, and suppressing a testamentary or recordable instrument. The offense of negotiating a worthless negotiable instrument has been carefully drafted to incorporate certain definitions of the Uniform Commercial Code and to insure that in this area, where commercial transactions are reinforced by criminal sanctions, the civil and penal law are closely related.

Part VII dealing with business and commercial frauds provides several innovations. Section 870, deceptive business practices, provides comprehensive and streamlined treatment of the various marketing and trade practices formerly covered under the heading of gross cheat. The offense of false advertising is recodified here in concise and clear language without sacrificing comprehensive coverage.

Section 872 adds the offense for falsifying business records. Section 873 provides comprehensive treatment for defrauding secured creditors and makes possible the elimination of various individual offenses pertaining to secured creditors which depend on the type of property, the mode of fraud, and the type of security device involved.

Part VII provides a new offense of commercial bribery and broadens the scope of present offenses dealing with sports bribery.

At the end of Chapter 8, the commentary contains a note explaining why the Code deliberately deletes archaic offenses based on ticket scalping, fortune telling, sorcery, and allied practices.

Chapter 9 - Offenses Against the Family and Against Incompetents

Chapter 9 deals with offenses against the family and against incompetents. There are four main innovations achieved by Chapter 9. Incest as a separate offense is eliminated but is replaced to some extent by the offense of illegally marrying. To the extent that sexual behavior is not covered by Part VI of Chapter 7, dealing with sex offenses, the Code has taken the position that such behavior should not be the subject of criminal law. This reflects a judgment that to condemn the participants in such behavior as criminals and to bring the criminal process into play serves no useful social function and is not designed to rehabilitate the situation.

Sections 902, 903, and 904 attempt to provide a clear definition of offenses against minors involving abandonment, non-support, and endangering welfare. At the same time, the formulation of Section 904, endangering the welfare of a minor, is intended to be limited to knowing violations of a legal duty which endanger the minor's physical or mental welfare. The present statute is this

area is so vague and so general in its application as to be constitutionally suspect. Section 905 is intended to provide the same protection for incompetents as is otherwise provided for minors. Finally, Chapter 9 deliberately omits the offense of abortion. The reason for so doing is explained in the note on page 256.

Chapter 10 - Offenses Against Public Administration

Chapter 10 is perhaps the longest chapter in the Code. The various parts may not be of equal interest to all legislators. Generally, the entire body of the criminal law relating to public administration has been recodified and modernized. Some of the additions and amendments to the law are as follows:

1. Obstructing governmental operation is treated in general terms rather than on an ad hoc basis.

2. Refusal to aid peace officers and in fire control are made offenses.

3. Rendering false alarms to agencies dealing with public utilities and emergencies and false reporting to law enforcement authorities are made offenses.

4. Hindering apprehension and prosecution in any form is made an offense regardless of whether a person would qualify as an accessory after the fact or as an accomplice to an escape under common-law doctrine.

5. In addition to bribery, the following transactions involving public servants are made offenses: (a) giving and receiving of unlawful compensation; (b) giving and receiving of improper gifts; (c) unlawful assistance of a private interest; (d) obtaining of unlawful assistance from a public servant; and (e) failing to disclose a conflict of interest.

6. Misconduct by a public servant in an attempt to benefit himself or cause harm to another is made the subject of an offense.

7. Misuse of confidential information by a public servant is made an offense.

8. Offenses relating to falsification, in addition to the usual provision against perjury, are provided. Covered, in addition to sworn statements, are unsworn falsifications to authorities. Provision for retraction is also provided, affording an incentive to correction of a previous wrong-doing.

9. Offenses against the integrity of judicial proceedings are given comprehensive treatment, and the offense of criminal contempt of court has been carefully drafted in line with recent United States Supreme Court cases.

Chapter 11 - Offenses Against Public Order

Chapter 11 deals with offenses against public order. Offenses relating to public order often deal with conduct involving speech and assembly. Defining offenses in this area is a delicate task. Chapter 11 is an attempt to codify as offenses those forms of behavior which clearly exceed constitutional protection and which serve no legitimate purpose of the actor.

Section 1101 provides a simplified definition of disorderly conduct and is intended to serve all legitimate purposes previously served by the present inartfully drafted statute. In addition, the Code eliminates some glaring constitutional problems under the present law on disorderly conduct.

Section 1105 deals with special problems presented by obstructions of public highways or passageways. Many cases of obstruction involve crowds who have gathered to listen to a speaker. Because of the constitutional problems involved, obstruction is handled separately rather than as a form of disorderly conduct.

Various forms of harassment are grouped together under one offense in Section 1106.

Section 1108 is a general section dealing with desecration of venerated objects. While the section is broader in its coverage than existing law, it eliminates many problems presented by archaic language in existing statutes.

Cruelty to animals is dealt with as an offense of general application and not on ad hoc basis relating to certain types of animals.

The offense of violation of privacy is enlarged to cover all types of electronic eavesdropping and message interception. It does not cover, however, eavesdropping or message interception carried out with the consent of one of the parties to the communication.

Chapter 12 - Offenses Against Public Health and Morals

Chapter 12 deals with four separate areas of offenses against public health and morals.

Part I, dealing with prostitution and promoting prostitution, effects the following changes:

1. It does not cover indiscriminate sexual intercourse without hire.

2. It reduces the offense of prostitution from a full misdemeanor to a petty misdemeanor, which is more consistent with the usual sentence that is imposed in this type of case.

3. It authorizes more severe sentences for those who promote (i.e. advance or profit from) the prostitution of others than it does for those who simply engage in prostitution.

4. In the case of promoting prostitution, it authorizes more severe sentences for those who coerce others or promote the prostitution of the young than for those who engage in the behavior by less aggravated means.

Part II of Chapter 12 relates to obscenity. It is a studied attempt to incorporate into the codified law the United States Supreme Court definition of pornography and to distinguish between that which may be regarded as pornographic for the adult population and that which may be regarded as pornographic for minors. Although the State may have an interest in regulating the distribution to minors of materials harmful to them, it would be illogical and unconstitutional to use the same standards in determining what materials may be safely distributed to adults.

It should be noted that Part II is not limited to materials but also include performances, films, and sound recordings.

Part III incorporates gambling legislation similar to that enacted in New York and proposed in Michigan. The basic thrust of Part III is to impose heavier penalties on various forms of institutionalized gambling than are now permitted by law and at the same time to recognize that society no longer condemns as criminal the casual wager or gambling in a social context. The underlying premise in this form of gambling legislation is that the criminal law should not condemn the willingness or weakness of people to engage in gambling; rather it should seek to penalize those individuals who seek to exploit that willingess or weakness in others.

The basis for distinguishing the casual bet or permissible gambling from impermissible conduct relating to gambling, is achieved by statutory definitions. A person who "advances gambling activity" (see Subsection 1220(1)) or who "profits from gambling activity" (see Subsection 1220(10)) falls within the ambit of various offenses. A person's status as a "player" (see Subsection 1220(8)) generally exempts his conduct from the scope of the offenses. Because of certain fears expressed in Hawaii about this type of legislation, the Code adopts a more

cautious approach than that taken in New York and Michigan and requires the defendant to prove that he is merely a player and that he is not one who advances or profits from gambling activities.

Part IV of Chapter 12 deals with the subject of narcotics, dangerous drugs, and marijuana. There is no area of the penal law which receives as much attention from the press as the area of narcotics, dangerous drugs, and marijuana. Part IV is designed to meet many criticisms which have been made of existing legislation. Among the innovations proposed are the following:

1. Distinguishing between the various types of individuals involved in illegal traffic in narcotics, dangerous drugs, marijuana concentrates, and marijuana. Basically, there are three echelons in the illicit traffic. The importer, the distributor, and the consumer. The amount of the illicit substances possessed or dispensed is perhaps the most telling indicia for placing the defendant within the illicit scheme. Accordingly, the Code distinguishes the severity of sentence on the basis of the amount of the substance possessed or dispensed.

2. Distinguishing between narcotics, dangerous drugs, marijuana concentrates (hashish and tetrahydrocannibinol), and marijuana. Although there are variations in the dangers within each category, it seems clear that the substances present different degrees of dangers and that they must be treated differently under the law. Thus, generally, narcotics are characterized by an addictive quality and present the greatest potential for danger. Accordingly, offenses relating to these drugs are handled separately. Similarly, dangerous drugs, such as amphetamines, barbituates, etc., present a danger somewhat less severe than narcotics and are dealt with separately.

3. Finally, distinguishing between adult and youthful victims of the offense. The fact that the person to whom the substance is dispensed is young presents an aggravated circumstance which must be taken into

consideration in determining the grade or class of the offense.

The policy of Part IV of Chapter 12 is to penalize most severely the importers and distributors of the substances involved and to treat the consumers more leniently. Generally, the Code provides sanctions as severe, or even more severe, as those under the present law; however, in the area of possession of small amounts of marijuana, a slight reduction is proposed.

The reduction from a misdemeanor to a petty misdemeanor of the offense based on the possession of a small amount of marijuana (an amount which indicates that the possessor is probably a consumer rather than a wholesaler or distributor) is based on a number of considerations. First, the entire statutory scheme proposed attempts to distinguish according to the social dangers presented viz., to distinguish between the wholesaler at one extreme and the user at the others, and to distinguish between dealing in narcotics on the one hand and dangerous drugs or marijuana on the other. It seems harsh, in this light, to authorize the same sentence for a marijuana user that is authorized for a marijuana pusher or for a dangerous drug user. Secondly, whatever view one may take on the question of the continued prohibition on the use of marijuana, it seems clear that the use of marijuana per se does not present social dangers which call for a misdemeanor sentence. A petty misdemeanor sentence is more in accord with the court practice of accepting bail forfeitures or sentencing marijuana users to probation. Thirdly, marijuana seems to be the preferred intoxicant of the young--in much the same vein as alcohol seems to be the preferred intoxicant of their elders. Whatever corrective social action ought to be brought to bear, the criminal process seems ill-suited to the task. If a criminal sanction is to be retained,

considerations based on humanity and restraint suggest that it be of the least recognized severity.

Out of abundance of caution, it is emphasized again that the above discussion is only an overview of some of the highlights of the proposed Code and that the Code and its commentary are the authoritative recommendations.

Chapter II

PENAL LAW REVISION IN THE UNITED STATES

A. Progress Report on Penal Law Revision in the States

In 1961, the year prior to the publication of the final and official draft of the Model Penal Code, the Director and Assistant Director of the American Law Institute reported:

> Criminal law in the United States, although relied upon by society for protection of citizens against the severest kinds of harm that may be inflicted against men and institutions, has long been neglected by those concerned with the betterment and improvement of the law. It did not receive the special attention that had been accorded the other branches of the law in the sense of systematic analysis and synthesis and the bringing to bear on its basic problems the relevant knowledge that had been developed in the social sciences.[1]

The decade of work that produced the Model Penal Code served as a spur to action and a source of ideas, setting in force an impetus that has now so gathered momentum that all but eleven states have either recently completed revision of their substantive penal law or are engaged in the revision work. Furthermore, at the Federal level, the National Commission on Reform of Federal Criminal Laws[2] has issued a proposed Federal Criminal Code. The table below shows the current status of penal law revision across the nation.

STATUS OF SUBSTANTIVE PENAL LAW REVISION*

I. Revised Codes; Effective Dates: (9)

Conn. Gen. Stat. Ann., Penal Code (Pub. Act 828 [1969]); 10/1/1971.

Ga. Code Ann., Tit. 26; 7/1/1969.

Ill. Ann. Stat., Ch. 38; 1/1/1962.

Kan. 1969 Session Laws, Ch. 180; 7/1/1970.

La. Rev. Stat., Tit. 14; 1942.

Minn. Stat. Ann., Ch. 609; 9/1/1963.

N. Mex. Stat. Ann., Ch. 40a; 7/1/1963.

N. Y. Rev. Penal Law; 9/1/1967.

Wis. Stat. Ann., Tit. 45; 7/1/1956.

II. Current Substantive Penal Code Revision Projects:

A. Revisions Completed; Not Yet Enacted: (9)

Delaware (1967)

Hawaii (submitted to 1970 Legislature)

Michigan (1967)

New Hampshire (April 1969) (to be submitted to 1971 Legislature)

Pennsylvania (1967) (Proposed Crimes Code now being reconsidered by Pa. B. Ass'n Committee on Recodification of Criminal Law)

Puerto Rico (1967)

Texas (Draft Code to be printed in pamphlet form fall 1970; Code to be submitted to Legislature Jan. 1971)

United States (Preliminary Draft Code now in press)[3]

Vermont (tentative enactment 1970) (subject to review by Criminal Code Study Committee)

*Source: Annual Report 1970, American Law Institute, May, 1970, p.22

B. Revisions Well Under Way: (12)

California (since 1963)

Colorado (since 1964)

Idaho (since 1968) (plan to submit Code to 1971 Legislature)

Iowa (to report to General Assembly Jan. 1971 or 1972)

Kentucky (plan to submit Code to Jan. 1972 Legislature)

Maryland (proposed new Code with Commentary to be printed "shortly")

Montana (plan to submit Code to 1971 Legislature)

New Jersey (since 1969)

Ohio (Committee has resolved to present a bill to Jan. 1971 Legislature. No drafts in print yet.)

Oregon (plan to submit Code to 1971 Legislature)

Rhode Island (Governor's Task Force, since 1968)

Washington (drafting about 1/3 completed)

C. Revisions at Varying Preliminary Stages: (4)

Maine, Massachusetts, Missouri, South Carolina

D. Revisions Authorized--Work Not Yet Begun: (4)

Arizona, Florida, Nebraska, Virginia

E. Contemplating Revisions: (3)

Alaska (Bill introduced to Legislature in March 1970 to set up Law Revision Commission.)

North Carolina (ad hoc Committee)

Utah (Legislative Council)

III. No Over-all Revisions Planned: (11)

Alabama, Arkansas, Indiana, Mississippi, Nevada, North Dakota, Oklahoma, South Dakota, Tennessee, West Virginia, Wyoming

The proponents of penal law revision have relied on common grounds in explaining the need for a modern penal code in their respective jurisdictions. It is stated that their criminal laws have never before been subjected to official, over-all analysis, and revision; that their individual criminal law statutes are characterized by inconsistency and contradiction, and in some cases are irrational and archaic; and that an integrated, comprehensive code fills a need for bringing together, sorting out, modernizing, harmonizing, and supplementing their disorganized criminal laws. The draftsmen of the new penal codes then have pointed out the antiquity of the criminal laws to be replaced and the extent of piecemeal amendments over the years by successive legislatures. In each case, the new penal codes are intended to replace a body of law that provides no sanctions for certain conduct that contemporary society deems sanctionable, prohibits conduct with which contemporary society believes the law should not be concerned, and contains internally inconsistent provisions applicable to the same types of sanctionable conduct. In short, the codes are intended to align the criminal law with society's values and modern public policy.

Edmund G. Brown, Chairman of the National Commission on Reform of Federal Criminal Laws, persuasively enunciated the case for penal law revision in his submission statement for the proposed new Federal Criminal Code. He cited the following historic precedent:

> When Sir Robert Peel first entered the British Cabinet as Home Secretary, two of his most urgent goals were police reform and law reform--in that order. His experience in office did not alter his estimate of the importance of these objectives, but it did cause him to reverse the order of their accomplishment; and his achievements in police reorganization and training

> came largely during his eventual Prime Ministership. It is said that he speedily learned that good police performance is highly dependent upon the existence of rationally conceived and clearly formulated criminal statutes.[4]

Brown then said, "If criminal law is to be respected, it must be respectable."[5]

Numerous legal critiques and historical accounts have been published about the nine new penal codes.[6] Certain issues are reported to have been most controversial and troublesome, both in preparation and in proceeding through the legislative processes that led to the enactments. The single most controversial issue has been that of revision of criminal abortion laws to permit therapeutic abortion under stated conditions.[7] Five of the new code states (Connecticut, Illinois, Louisiana, Minnesota, and Wisconsin) have maintained unchanged their traditional law under which abortion is permitted only when necessary to preserve the life of the woman. In the other states with new penal codes, the criminal law of abortion has been changed either as part of the codes or by independent enactments adopted by legislatures subsequent to those at which their comprehensive penal law revisions were approved. Georgia, Kansas, and New Mexico enacted variations of the Model Penal Code provision; and New York passed a law permitting any abortion performed with the woman's consent, by a physician, within twenty-four weeks from the commencement of her pregnancy.

The controversial abortion issue, in fact, was crucial; in some jurisdictions, favorable consideration of a code depended upon deletion of proposed changes to the abortion laws.[8] In Illinois, a continued tight abortion law was the bargain for relaxed homosexuality provisions.[9] Other areas that caused great concern in the course of preparation and legislative deliberations on

the codes were capital punishment, consensual sex offenses, sentencing, rules of construction, justification, the insanity defense, and regulation of firearms.

The penal codes did not affect any of the state's basic law dealing with capital punishment. In Connecticut[10] and Georgia,[11] the likelihood of imposition of sentence of death was greatly reduced through procedural changes and decreasing the number of crimes for which the death penalty may be given. In Kansas,[12] the issue was circumvented by a decision that the use of capital punishment is a matter of policy which transcends the ordinary considerations relevant to the substantive criminal law. The controversy over capital punishment remains significant[13] and is likely never to end. A great lawyer wrote on this subject:

> The question of capital punishment has been the subject of endless discussion and will probably never be settled so long as men believe in punishment... Questions of this sort...are not settled by reason; they are settled by prejudices and sentiments or by emotion. When they are settled they do not stay settled, for the emotions change as new stimuli are applied to the machine.[14]

Although the draftsmen of the new penal codes had proposed major revisions to the matter of consensual sex offenses, few state legislatures approved of the recommended changes. As noted before,[15] the Illinois Criminal Code permits homosexual acts between consenting adults in private, making Illinois the first state to remove criminal penalties for such conduct. Connecticut, too, modified its position on certain sexual conduct. The Connecticut Penal Code does not prohibit sexual intercourse between unmarried, consenting adults in private; the Code is silent on this point.[16] It is noted, however, that in Connecticut, adultery is retained as a crime.[17] The rationale behind the Connecticut Penal Code treatment of sex offenses is:

> The Code's provisions on sex offenses adopt the basic principle that private, consensual sexual activity between competent adults, whether heterosexual or homosexual, not involving corruption of the young or commercialization, is no business of the criminal law and should be left to the domestic relations courts and to the concern of the spiritual authorities. Sexual activity involving force or the imposition of the will of an older person on that of a younger or incompetent one will still be prohibited.[18]

The Criminal Law Study Committee in Georgia, in effect, evaded the issue, stating:

> With information that perhaps this is the only country in the world making extramarital consensual sex acts criminal, and strong arguments on the moral side of the issue, the committee left the law substantially in its present form... leaving the answer to future legislators.[19]

Kansas, on the other hand, revised its sodomy law, making the prohibition inapplicable to persons who are husband and wife or consenting adult members of the opposite sex.[20]

New York Assemblyman Richard Bartlett, Chairman of the New York Temporary Commission on Revision of the Penal Law and Criminal Code, relates the unsuccessful experience there on revising the law dealing with consensual sexual conduct:

> As it turned out, the two areas that became really significant during the 1965 session, during which we were trying to have the package passed, were the death penalty provisions, and sex crimes. Oddly enough, and I think it's odd because I didn't ascribe that importance to these two aspects of the sex crime area, our proposals to eliminate adultery as a crime and consensual sodomy between adults as a crime drew the sharpest fire. Indeed, amendments were offered to the Commission's proposal only as to these two particulars. Both of the amendments prevailed, and adultery and consensual sodomy were designated crimes as part of the new law.[21]

Some of the other areas in which the new penal codes were subjected to severe scrutiny and criticism were largely matters relating to traditions of long standing in a particular jurisdiction. For example, one of the reporters for the Louisiana Criminal Code strongly criticized that Code for not abrogating the common-law rule of strict construction of criminal statutes, a position he felt to be inconsistent with the Louisiana system of civil law.[22] The Georgia Code, as proposed by the study committee, would have upset the settled practice in that State of authorizing the jury, rather than the judge, to set sentences in felony trials. The Code, as enacted, leaves the sentencing authority with the jury.[23]

Other problems that arose in connection with the new penal codes were not problems of general public interest or policy but rather the technical difficulties of codifying intricate rules of law that had formerly been decisional and not statutory pronouncements. Among these were the codification of the rules applicable to justification[24] and the insanity defense.[25]

One final controversial matter related to penal law revision is that of firearm regulation. The Executive Director of the New York Temporary Commission on Revision of the Penal Law and Criminal Code, Richard Denzer, wrote:

> We...wanted to change the old Penal Law's provisions on firearms, but we were told that we couldn't touch them. As is clear now, the National Rifle Association would not allow you to change a comma. So, standing out like a sore thumb, the Sullivan Law provisions remain in the Penal Law. They were poorly drafted, and we chose to put them as far back in the Penal Law as possible.[26]

The foregoing brief survey suggests that other states' experiences in enacting new penal codes are unlikely to be duplicated on all counts when the legislature takes under formal

consideration enactment of the Hawaii Penal Code (Proposed Draft). On the two critical issues of abortion and capital punishment, the Proposed Code offers no change to existing law and policy.[27] Hawaii's new abortion law (Act 1, SLH 1970) and comparatively new law abolishing the death penalty (Act 282, SLH 1957) would continue in full effect and would not be affected by enactment of the Proposed Code. Similarly, the Code would preserve the status quo with respect to the State's policy of following the true indeterminate sentencing system.[28]

On the matter of firearms, it is noted that the Penal Law Revision Project of the Judicial Council of Hawaii also has prepared a Proposed Firearms and Dangerous Weapons Control Act, complementary to the Hawaii Penal Code (Proposed Draft). The proposed Act[29] would introduce a comprehensive new licensing and registration scheme for the purchase, ownership, transfer, or possession of firearms and ammunition, as well as stringently limit the use, manufacture, sale, transfer, or possession of all weapons and dangerous instruments especially suited for criminal use. The Proposed Firearms and Dangerous Weapons Control Act is recommended to the Hawaii Legislature by the Penal Law Revision Project with the stated intent of controlling the availability of firearms, ammunition, and other weapons and dangerous instruments within the constraints of constitutional rights.

It is not possible to forecast which specific areas of the total proposal for a Hawaii Penal Code will evoke the greatest interest on the part of legislators and other citizens. Probably, however, considerable attention will be paid to such issues as the rules of statutory construction (sections 104 and 105); the de-criminalization of certain consensual sexual conduct by adults in private (Chapter 7, Part V, and section 900); the creation of new criminal offenses in the areas of public administration (Chapter 10) and "white collar" crimes (Chapter 8, Parts VI,

VII, and VIII); the liberalization of the existing total ban on gambling to permit social gambling and to penalize only exploiters of gambling activity (Chapter 12, Part III); and the restructuring of the criminal laws dealing with narcotics, dangerous drugs, and marijuana (Chapter 12, Part IV).

B. Recommendations at the National Level: Relationship of Penal Law Reform to Crime Control

Judge A. Leon Higginbotham, Vice President of the National Commission on the Causes and Prevention of Violence, has written in the Final Report of that Commission about his personal sense of increasing "commission frustration". He cites the twenty-five-year record of significant Presidential and national fact finding commissions that have emphasized and re-emphasized, studied and re-studied, probed and re-probed the problems of poverty, racism, and crime.[30] He concludes:

> Surveying this landscape, littered with the unimplemented recommendations of so many previous commissions, I am compelled to propose a national moratorium on any additional temporary study commissions to probe the causes of racism, or poverty, or crime, or the urban crisis. The rational response to the work of the great commissions of recent years is not the appointment of still more commissions to study the same problems--but rather the prompt implementation of their many valuable recommendations.[31]

From these commission reports and from other informed sources, a great store of information has been accumulated about crime and legislative action related to crime. None of the authorities adopts a thesis that penal law reform is a cure for crime; all, however, agree that such reform is, at least, a desirable component of public programs to reduce the problems of serious crime and to

strengthen criminal law enforcement. There is also general agreement that the larger issues confronting the criminal justice system relate to poverty, irrational discrimination, ignorance, disease, urban blight, despoiling of the environment, and the anger, impatience, cynicism, and despair that these conditions inspire in many segments of the public, especially the younger generation. The essence of the recommendations that have issued from these knowledgeable sources, with particularly heavy reliance on the Crime Commission work and on the Model Penal Code, has recently been presented in a distilled and unique form by Norval Morris and Gordon Hawkins--The Honest Politician's Guide to Crime Control.[32] One reviewer closed his analysis of the widely discussed book as follows:

> Who should read it? People in government, certainly. Journalists, emphatically. And every civilian who is concerned with crime, and who isn't?[33]

The authors present their cure for crime in the form of provocative ukases. The law-reform component of their plan, for instance, provides:

1. Drunkenness. Public drunkenness shall cease to be a criminal offense.

2. Narcotics and drug abuse. Neither the acquisition, purchase, possession, nor the use of any drug will be a criminal offense. The sale of some drugs other than by a licensed chemist (druggist) and on prescription will be criminally proscribed; proof of possession of excessive quantities may be evidence of a sale or of intent to sell.

3. Gambling. No form of gambling will be prohibited by the criminal law; certain fraudulent and cheating gambling practices will remain criminal.

4. Disorderly conduct and vagrancy. Disorderly conduct and vagrancy laws will be replaced by laws precisely stipulating the conduct proscribed and defining the

circumstances in which the police should intervene.

5. Abortion. Abortion performed by a qualified medical practitioner in a registered hospital shall cease to be a criminal offense.

6. Sexual behavior. Sexual activities between consenting adults in private will not be subject to the criminal law.

   Adultery, fornification, illicit cohabitation, statutory rape and carnal knowledge, bigamy, incest, sodomy, bestiality, homosexuality, prostitution, pornography, and obscenity; in all of these the role of the criminal law is excessive.

7. Juvenile delinquency. The juvenile court should retain jurisdiction only over conduct by children which would be criminal were they adult.

8. A Standing Law Revision Committee. Every legislature must establish a Standing Criminal Law Revision Committee charged with the task of constant consideration of the fitness and adequacy of the criminal law sanctions to social needs.[34]

The rationale behind these steps to deal with the issue of overcriminalization is analyzed by the authors:

1. Where the supply of goods or services is concerned, such as narcotics, gambling, and prostitution, the criminal law operates as a "crime tariff" which makes the supply of such goods and services profitable for the criminal by driving up prices and at the same time discourages competition by those who might enter the market were it legal.

2. This leads to the development of large-scale organized criminal groups which, as in the field of legitimate business, tend to extend and diversify their operations, thus financing and promoting other criminal activity.

3. The high prices which criminal prohibition and law enforcement help to maintain have a secondary criminogenic effect in cases where demand in inelastic, as

for narcotics, by causing persons to resort to crime in order to obtain the money to pay those prices.

4. The proscription of a particular form of behavior (e.g., homosexuality, prostitution, drug addiction) by the criminal law drives those who engage or participate in it into association with those engaged in other criminal activities and leads to the growth of an extensive criminal subculture which is subversive of social order generally. It also leads, in the case of drug addiction, to endowing that pathological condition with the romantic glamour of a rebellion against authority or of some sort of elitist enterprise.

5. The expenditure of police and criminal justice resources involved in attempting to enforce statutes in relation to sexual behavior, drug taking, gambling, and other matters of private morality seriously depletes the time, energy, and manpower available for dealing with the types of crime involving violence and stealing which are the primary concern of the criminal justice system. This diversion and overextension of resources results both in failure to deal adequately with current serious crime and, because of the increased chances of impunity, in encouraging further crime.

6. These crimes lack victims, in the sense of complainants asking for the protection of the criminal law. Where such complainants are absent it is particularly difficult for the police to enforce the law. Bribery tends to flourish; political corruption of the police is invited. It is peculiarly with reference to these victimless crimes that the police are led to employ illegal means of law enforcement.

It follows therefore that any plan to deal with crime in America must first of all face this problem of the overreach of the criminal law, state clearly the nature of its priorities in regard to the use of the criminal sanction, and indicate what kinds of immoral or antisocial conduct should be removed from the current calendar of crime.[35]

The ukases intended to reduce the lethal impact of murder, violence, and sudden death are:

Guns

1. All firearms--handguns, rifles, and shotguns--must be registered and all persons required to obtain a license to possess or carry any such weapon. The license will cover only a particular identified weapon; the license must be renewed annually. Other than in exceptional cases, a license to possess a handgun will be restricted to the police and to authorized security agencies. Licenses for rifles and shotguns will also be restrictively granted. Gun clubs, hunting clubs, and similar sporting associations using firearms will be required to store the firearms used by their members on club premises and to maintain close security over them.

2. Mail-order sales of firearms other than to firearms dealers shall be prohibited. Firearms dealers and the manufacturers of all guns and ammunition must be licensed by the federal Department of Justice; their license fee shall be sufficient to exclude dealing or manufacture for personal use. Firearms dealers and manufacturers of arms and ammunition shall be required to keep detailed records of their sales and manufacturers, which shall be made available to police and security officers on demand.

3. Any person who uses or attempts to use a firearm or imitation firearm in order to resist arrest or the arrest of another shall be punishable with imprisonment of up to ten years in addition to the punishment imposed for the offense (if any) for which he was being arrested.

4. Any person who at the time of committing or being arrested for any criminal offense has in his possession a firearm or imitation firearm shall be punishable with imprisonment of up to five years in addition to the punishment imposed for the offense committed or for which he was arrested, unless he can show that his possession of the weapon was for a lawful purpose.

5. The possession of military weapons--machine guns, mortars, siege guns, flamethrowers, mines, antitank guns, and similar hardware--other than by the armed forces of the government, shall be prohibited.

Knives and Offensive Weapons

6. The possession of switchblade or gravity knives (also known as "spring blades", "swing backs", "snap" and "flick" knives) shall be prohibited.

Drunken Driving

7. Any person driving or attempting to drive a motor vehicle on a road or other public place having consumed alcohol in such quantity that the proportion in his blood exceeds 80 mg per 100 ml (0.08 per cent) will be liable to a maximum penalty, in respect of his first such offense, of twelve months' disqualification from driving; second and subsequently such offenses, five years. A police officer in uniform may require a driver to provide a specimen of breath for a "breathalyzer" test, if he has reasonable cause to believe (a) that the driver has alcohol in his body, or (b) that the driver has committed a moving traffic offense, or (c) that the driver has been involved in an accident. If the breathalyzer test indicates that the driver is probably above the legal limit of ingested alcohol, he may be arrested and taken to the police station where he may be arrested and taken to provide a specimen of blood or urine for laboratory analysis.

Capital Punishment

8. Capital punishment for all crimes, civil and military, shall be abolished.[36]

The five ukases on guns are designed for domestic disarmament and for using the general deterrent force of several penal sanctions to inhibit the use of guns in resisting arrest or committing crime. The ukase against switchblades and gravity knives is direct as the next most deadly weapons used in homicide and

serious assaults. As to the drunken driving ukase, it is estimated that when applied, it will prevent more deaths and grievous injuries than flow from the combined consequences of all homicides and assaults. The final ukase in the area of violence requires the state to eschew unnecessary violence by the total abolition of capital punishment.[37]

As the several states and the federal government, through the National Commission on Reform of Federal Criminal Laws, are progressing with their penal law reform projects, the once neglected criminal branch of the law is accumulating the scholarly and practical knowledge and source materials necessary for the development of a rational and constructive law to apply to the criminal disorders of contemporary society. Although it is to be expected that divisions of opinion will emerge on many of the issues involved so vital to the maintenance, at one time, of a reasonably orderly society and individual liberty, it is also suggested that the Hawaii Legislature has the opportunity to enact a desirably rational and constructive body of criminal law based on the Hawaii Penal Code (Proposed Draft).

Chapter III

HAWAII PENAL CODE (PROPOSED DRAFT), CHAPTER 13 REPEAL AND RECODIFICATION

The technical difficulty encountered in codifying a major subject area of statutory law is largely a drafting challenge. However, it is obviously important that meticulous care be exercised in considering enactment of the repeal and amending provisions of the Hawaii Penal Code (Proposed Draft). The need to assure the Code's conformity to the Hawaii Revised Statutes and to guard against inconsistent overlapping and omission furnishes additional reason to recommend a deferred effective date when the Code is adopted.

Chapter 13 of the Hawaii Penal Code (Proposed Draft) comprises the repeal and recodification provisions. It is recommended that section 1300 (2) (b) and (3) (a) of the Code be amended to read as follows (the changes recommended are shown by underscoring material to be added and bracketing material to be deleted):

(2) (b) The following chapters and sections shall be assigned appropriate chapter and section numbers and shall be recodified, as of the effective date, by the revisor of statutes as Title 38 of the Hawaii Revised Statutes:

(i) sections [705-4 through 705-8] <u>705-4, 705-5, and 705-6 through 705-8</u>;

(ii) chapter 708 (sections 708-1 through 708-38);

(iii) sections 709-1 through 709-19, and 709-51;

(iv) sections 710-1 through [710-10] <u>710-11</u>, and 710-15;

(v) sections 711-1 through 711-64, 711-67, 711-68, 711-78, 711-79, 711-84, and 711-96.

(vi) chapter 713 (sections 713-1 through 713-27);

(vii) chapter 714 (sections 714-1 through 714-6); [and]

(viii) chapter 715 (sections 715-1 through 715-19)[.]; <u>and</u>

<u>(ix) chapter 716 (sections 716-1 through 716-7);</u>

(3) (a) The following chapters and sections shall be, and are hereby, repealed as of the effective date:

(i) <u>section 705-5.5;</u>

(ii) chapter 721 (sections 721-1 through 721-5);

(iii) chapter 722 (sections 722-1 through 722-12);

(iv) chapter 723 (sections 723-1 through 723-11);

(v) chapter 724 (sections 724-1 through 724-9);

(vi) chapter 725 (sections 725-1 through 725-11);

(vii) chapter 726 (sections 726-1 through 726-4);

(viii) sections 727-1 through 727-24;

(ix) sections 728-1 through 728-7, 728-9, and 728-10;

(x) chapter 729 (sections 729-1 through 729-5);

(xi) chapter 730 (sections 730-1 through[730-3]<u>730-12</u>);

(xii) chapter 731 (section 731-1);

(xiii) chapter 733 (sections 733-1 through 733-8);

(xiv) section 734-3;

(xv) chapter 735 (sections 735-1 through 735-4);

(xvi) chapter 736 (section 736-1);

(xvii) chapter 737 (section 737-1);

(xviii) chapter 738 (sections 738-1 through 738-4);

(xix) chapter 739 (sections 739-1 through 739-7);

(xx) chapter 740 (sections 740-1 through 740-12);

(xxi) chapter 741 (sections 741-1 through 741-8);

(xxii) chapter 742 (sections 742-1 through 742-7);

(xxiii) chapter 743 (sections 743-1 through 743-21);

(xxiv) chapter 744 (sections 744-1 through 744-4);

(xxv) chapter 745 (sections 745-1 through 745-7);

(xxvi) chapter 746 (sections 746-1 through 746-19);

(xxvii) sections 747-1 through 747-16, 747-18 through 747-25;

(xxviii) chapter 748 (sections 748-1 through 748-12);

(xxix) chapter 749 (sections 749-1 through 749-6);

(xxx) chapter 750 (sections 750-1 through 750-22);

(xxxi) chapter 751 (sections 751-1 through 751-14);

(xxxii) chapter 752 (section 752-1);

(xxxiii) chapter 753 (sections 753-1 through 753-17);

(xxxiv) chapter 754 (sections 754-1 and 754-2);

(xxxv) chapter 755 (section 755-1);

(xxxvi) chapter 756 (sections 756-1 through 756-5);

(xxxvii) chapter 757 (sections 757-1 and 757-2);

(xxxviii) chapter 758 (section 758-1);

(xxxix) chapter 759 (sections 759-1 and 759-2);

(xl) chapter 761 (sections 761-1 through 761-10);

(xli) chapter 762 (section 762-1);

(xlii) chapter 763 (sections 763-1 and 763-2);

(xliii) chapter 764 (sections 764-1 through 764-3);

(xliv) chapter 765 (sections 765-1 through 765-11);

(xlv) chapter 766 (section 766-1);

(xlvi) chapter 767 (sections 767-1 through 767-12);

(xlvii) chapter 768 (section 768-1 through 768-77);

(xlviii) chapter 770 (section 770-1);

(xlix) chapter 771 (sections 771-1 and 771-2); and

(l) chapter 772 (sections 772-1 through 772-7);

The recommended changes reflect provisions in the Code dealing with medical examination of a defendant when his physical or mental condition is an issue with respect to the defendant's fitness to proceed, his responsibility for conduct, or his capacity to have a particular state of mind (Code section 404; repeal of section 705-5.5, Hawaii Revised Statutes); credit card offenses (Code chapter 8, particularly sections 858 to 860; repeal of chapter 730, Hawaii Revised Statutes); and gambling and lottery offenses (Code chapter 12, part III; repeal of chapter 746, Hawaii Revised Statutes). One of the changes also provides that the Uniform Act on Status of Convicted Persons (chapter 716, Hawaii Revised Statutes) is not repealed but assigned a new chapter and section numbers by the Revisor of Statutes. Appendix I contains a Table of Disposition, prepared with assistance from the office of the Revisor of Statutes, showing specifically the effect that the Code would have on existing laws.

A number of sections in the Hawaii Revised Statutes contain references to sections that would be repealed by enactment of the Code. Appendix II lists these sections, and their references, which would require amendment.

FOOTNOTES

Chapter I

1. Prepared by Don Jeffrey Gelber, Reporter for the Penal Law Revision Project and Patricia K. Putman, Legislative Reference Bureau.

2. State v. Moeller 50 H.110; 433 P.2d 136 (1967)

Chapter II

1. Goodrich and Wolkin, The Story of the American Law Institute 1923 - 1961, American Law Institute, 1961, p. 22

2. Established by Congress in 1966, P. L. 89-801

3. Now published, U. S. National Commission on Reform of Federal Criminal Laws, Study Draft of a New Federal Criminal Code (Title 18, United States Code), November, 1970, and Working Papers, volumes I and II, July, 1970

4. U. S. National Commission on Reform of Federal Criminal Laws, Study Draft of a New Federal Criminal Code (Title 18, United States Code), p. xx, November, 1970

5. Ibid., p. xxi

6. Connecticut, Georgia, Illinois, Kansas, Louisiana, Minnesota, New Mexico, New York, and Wisconsin

7. The abortion provisions under consideration in connection with the new penal codes essentially followed the recommendation found in the Model Penal Code. Section 230.3 of that Code provides that abortion performed by a physician in a hospital would be justifiable when it was considered necessary not only to safeguard the life of the woman but also to protect her physical or mental health, or when there was a substantial risk that the child would be born with a grave physical or mental defect, or when the pregnancy resulted from rape or incest.

8. Maynard E. Pirsig, "Proposed Revision of the Minnesota Criminal Code", 47 Minn. L. Rev. 417, 457 (January 1963); Commission to Revise the Criminal Statutes, Proposed Connecticut Penal Code, p. 10, (May, 1969); B. J. George, Jr., "A Comparative Analysis of the New Penal Laws of New York and Michigan", 18 Buff. L. Rev. 233, 241 (1968-1969).

9. John P. Heinz, Robert W. Gettleman, Morris A. Seeskin, "Legislative Politics and the Criminal Law", 64 NW L. Rev. 277, 321, 323 to 324 (July-August, 1969); B. J. George, Jr., "A Comparative Analysis of the New Penal Laws of New York and Michigan", 18 Buff. L. Rev. 233, 242 (1968-1969).

10. Note, "Criminal Law" The Structure of Connecticut's New Penal Code", 2 Conn. L. Rev. 661, 668 (Spring, 1970).

11. T. T. Molnar, "The Proposed Criminal Code of Georgia", 3 Ga. S. B. J. 145, 153 (November, 1966).

12. Paul E. Wilson, "New Bottles for Old Wine: Criminal Law Revision in Kansas", 16 U. of Kans. L. Rev. 585, 587 June, 1968).

13. Herman Schwartz and Richard Bartlett, "Criminal Law Revision Through a Legislative Commission: The New York Experience", 18 Buff. L. Rev. 211, 224 (1968-1969).

14. Clarence Darrow, "A Comment of Capital Punishment", in preface to John Laurence, A History of Capital Punishment, p. xv (1960).

15. Supra, at fn. 9.

16. Supra, fn. 10, at p. 662.

17. Sec. 53a-81, Gen. Stats. Conn., 1969 Supp.

18. Commission to Revise the Criminal Statutes, Proposed Connecticut Penal Code, p. 10, (May, 1969).

19. Supra, fn. 11; James C. Quarles, "An Introduction to Georgia's New Criminal Code", 5 Ga. S. B. J. 185, 211 (November, 1968).

20. Sec. 21-3505, Kans. Stat. Ann., 1969 Supp.

21. Supra, fn. 13.

22. Clarence J. Morrow, "The Louisiana Criminal Code of 1942 -- Opportunities Lost and Challenges Yet Unanswered", 17 Tul. L. Rev. 1, 4 (September, 1942); "The 1942 Louisiana Criminal Code in 1945: A Small Voice from the Past", 19 Tul. L. Rev. 483 (June, 1945).

23. Supra, fn. 11; James C. Quarles, "An Introduction to Georgia's New Criminal Code", 5 Ga. S. B. J. 185, 214 (November, 1968).

24. Supra, fn. 13, at p. 223; Herman Schwartz and Richard Denzer, "Drafting a New Penal Law for New York", 18 Buff. L. Rev. 251, 256 (1968-1969).

25. B. J. George, Jr., "A Comparative Analysis of the New Penal Laws of New York and Michigan", 18 Buff. L. Rev. 233, 242 (1968-1969).

26. Herman Schwartz and Richard Denzer, "Drafting a New Penal Law for New York", Buff. L. Rev. 251, 256 (1968-1969).

27. Hawaii Penal Code (Proposed Draft), p. 256 (Note on Abortion), p. 177 (Commentary on Section 701).

28. Hawaii Penal Code (Proposed Draft), p. 162 (Commentary on Section 660).

29. House Bills 155 and 424, Fifth Legislature of the State of Hawaii, Regular Session of 1969.

30. President Truman's Commission to Secure These Rights, the Crime Commission (President's Commission on Law Enforcement and Administration of Justice), the Council to the White House Conference to Fulfill These Rights, the Kerner Commission (National Advisory Commission on Civil Disorders), the Kaiser Commission (President's Committee on Urban Housing), and the Douglas Commission (National Commission on Urban Problems).

31. U. S. National Commission on the Causes and Prevention of Violence, Final Report, To Establish Justice, To Insure Domestic Tranquility, p. 116, December, 1969.

32. The University of Chicago Press, Chicago, 1969, p. xi, 271.

33. Charles D. Breitel, 37 U. of Chi. L. Rev. 628, 635 (Spring, 1970).

34. Norval Morris and Gordon Hawkins, The Honest Politician's Guide to Crime Control, The University of Chicago Press, Chicago, pp. 3, 27 (1969).

35. Ibid., pp. 5 and 6. See, also, The President's Commission on Law Enforcement and Administration of Justice, Task Force on Administration of Justice, "Substantive Law Reform and the Limits of Effective Law Enforcement", Task Force Report: The Courts, pp. 97 to 107 (1967); The Challenge of Crime in a Free Society, pp. 126 and 127. Also, James S. Campbell, Joseph R. Sahid, and David P. Stang, Report of the Task Force on Law and Law Enforcement to the National Commission on the Causes and Prevention of Violence, Law and Order Reconsidered, "The Problem of 'Overcriminalization'", pp. 551 to 570 (1969).

36. Ibid., pp. 63 and 64.

37. Other areas covered by the authors include the correctional system, the police system, juvenile delinquency, crime and the psychiatrist, organized crime, and criminal research.

Appendix I

HAWAII PENAL CODE

Table of Disposition

HRS	SUPP	HRS	SUPP
65-50	R	c 702 (702-1 to 5, 11 to 14)	R
66-48	R		
103-58	R	c 703 (703-1 to 5)	R
103-59	Am		
103-60	R	c 704 (704-1 to 5)	R
185-8	R	705-1 to 3	R
328-84	Am	705-4, 5	___
329-3	Am	705-5.5	R
329-4, 5	R	705-6 to 8	___
329-29	Am	c 706 (706-1 to 5)	R
329-31	R		
353-49	R	c 707 (707-1, 2)	R
575-1	R	708-1 to 11	___
577-8	R	708-21 to 24	___
577-12	R	708-31 to 38	___
c 701 (701-1 to 7)	R	709-1 to 19	___

Key: Am Amended
R Repealed
___ Section number to be assigned by Revisor

Table of Disposition (continued)

HRS	SUPP	HRS	SUPP
709-31 to 41	R	711-85	R
709-51	____	711-91 to 94	R
710-1 to 11	____	711-96	____
710-12 to 14	R	c 712 (712-1 to 11)	R
710-15	____	c 713 (713-1 to 27)	____
711-1	____	c 714 (714-1 to 6)	____
711-6 to 10	____	c 715 (715-1 to 19)	____
711-16 to 18	____	c 716 (716-1 to 7)	____
711-21 to 23	____	c 721 (721-1 to 5)	R
711-26 to 42	____	c 722 (722-1 to 12)	R
711-46 to 51	____	c 723 (723-1 to 11)	R
711-56	____	c 724 (724-1 to 9)	R
711-61 to 64	____	c 725 (725-1 to 11)	R
711-65, 66	R	c 726 (726-1 to 4)	R
711-67, 68	____		
711-71 to 73	R		
711-76, 77	R		
711-78, 79	____		
711-80 to 83	R		
711-84	____		

Table of Disposition (continued)

HRS	SUPP	HRS	SUPP
727-1 to 24	R	c 739 (739-1 to 7)	R
727-25	134-	c 740 (740-1 to 12)	R
728-1 to 7	R	c 741 (741-1 to 8)	R
728-8	____	c 742 (742-1 to 7)	R
728-9, 10	R	c 743 (743-1 to 21)	R
c 729 (729-1 to 4)	R	c 744 (744-1 to 4)	R
c 730 (730-1 to 12)	R	c 745 (745-1 to 7)	R
c 731 (731-1)	R	c 746 (746-1 to 19)	R
732-1	____	747-1 to 16	R
c 733 (733-1 to 8)	R	747-17	____
734-1, 2	____	747-18 to 25	R
734-3	R	c 748 (748-1 to 12)	R
c 735 (735-1 to 4)	R	c 749 (749-1 to 6)	R
c 736 (736-1)	R	c 750 (750-1 to 22)	R
c 737 (737-1)	R		
c 738 (738-1 to 4)	R		

Table of Disposition (continued)

HRS	SUPP	HRS	SUPP
c 751 (751-1 to 14)	R	c 765 (765-1 to 11)	R
c 752 (752-1)	R	c 766 (766-1)	R
c 753 (753-1 to 17)	R	c 767 (767-1 to 12)	R
c 754 (754-1, 2)	R	c 768 (768-1, 2, 6 to 8, 11 to 18, 21,	R
c 755 (755-1)	R	22, 26, 31 to 33, 36, 41, 46, 47, 51 to 58, 61, 62,	
c 756 (756-1 to 5)	R	66, 71, 76, 77)	
		769-1	134-
c 757 (757-1, 2)	R	c 770 (770-1)	R
c 758 (758-1)	R	c 771 (771-1, 2)	R
c 759 (759-1, 2)	R	c 772 (772-1 to 7)	R
c 760 (760-1 to 3)	———	c 773 (773-1 to 3)	———
c 761 (761-1 to 10)	R	c 774 (774-1)	———
c 762 (762-1)	R		
c 763 (763-1, 2)	R		
c 764 (764-1 to 3)	R		

Appendix II

HAWAII PENAL CODE - CONFORMING AMENDMENTS

HRS SECTIONS TO BE AMENDED	REFERENCE TO REPEALED SECTIONS
65-57	65-50
66-55	66-48
85-3, 45	756-2
92-28	734
134-1	724-4 to 6
142-14	722-12
286-109	707
329-20	329-3, 4
329-28	742-3
334-24	703, 711
334-51	703, 711
351-32	702-1, 723-2, 724-3 to 5, 748-1, 748-6, 749-1, 749-4, 753-3, 768-21, 768-26, 768-31, 768-36, 768-61
353-9	739-4
353-68	712-4
408-22	756-5
409-28	729
409-32	756-5
442-10	729
460-14	729
554-4	729
571-14	575-1, 577-8, 12
571-52.1	575
577-9 to 11	577-8
577A-1	768-7

HAWAII PENAL CODE - CONFORMING AMENDMENTS

HRS SECTIONS TO BE AMENDED	REFERENCE TO REPEALED SECTIONS
579-5	729-1
603-22	709, 711
666-3	727-1
714-4	740