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HAWAII PENAL CODE: AN ADDENDUM

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LEG REF BUREAU  
STATE OF HAWAII

On April 7, 1972, Governor John A. Burns enacted into law the Hawaii Penal Code as Act 9, Session Laws of Hawaii 1972. Before the bill (H.B. 20, H.D. 1, S.D. 1, C.D. 2) arrived at the Governor's desk, Senate and House Judiciary Committees, Joint Interim Legislative Committees, and Conference Committees had examined in exhaustive detail every provision of the Code during the three-year period of its legislative consideration. The enacted Code incorporates dozens of substantive and technical amendments as a result of the several thorough committee scrutinies.

This Addendum is presented as a postscript to the 1970 Legislative Reference Bureau Report on the Code, to outline some of the significant changes in the Code effected by the 1972 Legislature. The changes that are noted constitute an updating of the "Overview" set forth in the Bureau Report (pp 3 to 25). Section references are those of the Code.

Chapter 1 - Preliminary Provisions

- Sec. 104 The principles of construction provision is changed to specify that the provisions of the Code cannot be extended by analogy so as to create crimes not provided for in the Code.
- Sec. 105 The effect of the commentary (prepared by the Judicial Council, Penal Law Revision Project) is changed to specify that the commentary is not evidence of legislative intent.
- Sec. 114 In the matter of proof beyond a reasonable doubt, it is provided that in the absence of the required proof the innocence of the defendant is presumed, rather than assumed.

Chapter 2 - General Principles of Penal Liability

- Sec. 222 The affirmative defense of ignorance or mistake of law is deleted when based on the fact that the defendant did not know the law defining the offense and such law had not been published or otherwise made available to the defendant.

Sec. 234 The defense of consent to non-serious bodily injury is deleted.

Sec. 236 The authority of the court to dismiss de minimis infractions is changed from a mandatory to a discretionary authority.

### Chapter 3 - General Principles of Justification

Sec. 300 "Believes" is defined to mean reasonably believes; so that the reasonable man standard will apply in determining when the use of force in self-protection, protection of property, or protection of others is justified.

Sec. 307 The authority of guards to use necessary force to prevent escape from a detention facility is expanded to cover any such escape and not only escapes by persons charged with or convicted of felony.

Sec. 309 The authority of a warden or other official of a correctional institution to use necessary force to enforce lawful rules and procedures of the institution is expanded.

### Chapter 4 - Penal Responsibility and Fitness to Proceed

sec. 404 Provision is made for payment by the State for an indigent defendant's physician who examines the defendant for purposes of a defense of physical or mental disease, disorder, or defect that excludes penal responsibility.

Sec. 412 After a person has been committed to an appropriate institution following acquittal on the ground of physical or mental disease, disorder, or defect, the waiting period required before the person can apply to the court for discharge or conditional release is decreased from one year to ninety days.

Sec. 418 Provides exclusive original family court jurisdiction over 16 and 17 year old persons accused of crime, with discretion vested in the family court to waive its jurisdiction.

## Chapter 5 - Inchoate Crimes

No change.

## Chapter 6 - Disposition of Convicted Defendants

Sec. 601 The term "pre-sentence investigation" is changed to "pre-sentence diagnosis" in this section and elsewhere in chapter 6.

Sec. 606 The sentence of life imprisonment without possibility of parole is imposed for four cases of murder:

- (1) of a peace officer while in the performance of his duties;
- (2) of a person known by the defendant to be a witness in a murder prosecution;
- (3) of a person by a hired killer, in which event both the person hired and the person responsible for hiring the killer are subject to the sentence;
- (4) a person while the defendant was imprisoned.

In these four cases, it is also provided that persons so sentenced shall be able to apply after twenty years of imprisonment for commutation of sentence to life imprisonment with parole.

Sec. 607 The provision, that allowed a defendant before sentence to admit the commission of other crimes, to have such other crimes taken into account in determining his disposition, and to have such procedure give the defendant a chance to "start with a clean slate", is deleted.

Sec. 621 The court is given discretionary, rather than mandatory, direction in considering several grounds for withholding sentence of imprisonment.

Sec. 623 The period of suspension of sentence or probation is reduced from two years to one year for misdemeanors and from two years to six months for petty misdemeanors.

Sec. 667 The specialized correctional treatment for young adult defendants is left within the discretion of the court instead of being mandatory.

- Sec. 670 Provision is made for unconditional release, rather than release on parole, at the expiration of a prisoner's maximum term of imprisonment.
- Sec. 671 Time spent in incarceration before sentence or, where a prior conviction or sentence has been vacated, before sentence, is credited against the minimum, as well as the maximum, term of imprisonment.
- Sec. 672 The court is authorized to determine the initial place of confinement.

#### Chapter 7 - Offenses Against the Person

- Sec. 703 The offense of negligent homicide is divided into two degrees, first degree, a class C felony, being defined as causing the death of another person by the operation of a vehicle in a negligent manner.
- Sec. 704 The offense of negligent homicide in the second degree, a misdemeanor, is defined as causing the death of another person by the operation of a vehicle in a manner which is simple negligence.
- Sec. 715 The offense of terroristic threatening is redefined to exclude threats intended to cause, or in reckless disregard of the risk of causing, serious public inconvenience.
- Sec. 722 An affirmative defense to the offense of unlawful imprisonment in the second degree is provided for reasonable detention of suspected shoplifters.
- Sec. 723 The offense of custodial interference is redefined to exclude from penal liability relatives of the person in custody.
- Sec. 724 The offense of criminal coercion is raised from a misdemeanor to a class C felony.
- Sec. 730 The age of consent, for purposes of rape in the first degree, is raised from twelve years to fourteen years, and the requirement that the defendant had actual knowledge of the victim's age is eliminated.

- Sec. 731 (Same changes as above, for purposes of rape in the second degree)
- Sec. 733 (Same changes as above, for purposes of sodomy in the first degree)
- Sec. 734 (Same changes as above, for purposes of sodomy in the second degree)
- Sec. 736 (Same changes as above, for purposes of sexual abuse in the first degree)
- Sec. 737 The age of consent, for purposes of sexual abuse in the second degree, is raised from fourteen years to sixteen years, the requirement that the defendant be older than the victim is changed from an age difference of four years instead of six years, and the requirement that the defendant had actual knowledge of the victim's age is eliminated.
- Sec. 738 The offense of indecent exposure is redefined to eliminate the requirement that the defendant had actual knowledge that his conduct is likely to cause affront or alarm.
- Sec. 740 The requirement of prompt complaint in cases of sexual offenses is amended; so that in cases where the victim is less than sixteen, instead of fourteen, the time for prompt complaint is extended to one month after a parent, guardian, or other responsible person learns of the offense.
- Sec. 741 The provision requiring corroborating evidence for conviction of a felony sexual offense is eliminated. A new offense of incest is added as a class C felony, defined as the commission of an act of sexual intercourse with a person who is within the degrees of consanguinity or affinity within which marriage is prohibited.

#### Chapter 8 - Offenses Against Property Rights

- Sec. 816 A new section is added to the trespass law providing that in cases of criminal trespass in the second degree or simple trespass, it is a defense that the defendant was traveling over government lands on roads, paths, or trails leading to public beaches.
- Sec. 831 The dollar limit establishing theft in the first degree is decreased from \$500 to \$200. It is noted that separate legislative action (H.B. No. 1650, H.D. 1) makes theft of dynamite or other explosives theft in the first degree.

- Sec. 840 Robbery by a defendant armed with a dangerous instrument who uses force or the threat of force against a person is made robbery in the first degree.
- Sec. 841 Robbery in the second degree is redefined to be robbery in which force or the threat of force against the person is used or in which the defendant recklessly inflicts bodily injury upon another.
- Sec. 842 The offense of robbery in the third degree is eliminated, and a new section is added to define when an act is deemed committed in the course of committing a theft.
- Sec. 850 The definition of credit card in the Part related to forgery is eliminated, as well as sections 858 to 860 dealing with credit card offenses, and the prior law on the subject is retained.

#### Chapter 9 - Offenses Against the Family and Against Incompetents

- Sec. 903 The definition of support, for purposes of the offense of persistent nonsupport, is modified to exclude the item of medical attention. It is pointed out in the final Conference Committee Report that this change is made in order to avoid penalizing the free exercise of certain religions.

#### Chapter 10 - Offenses Against Public Administration

- Sec. 1020 The offense of escape in the first degree is raised from a class C felony to a class B felony.
- Sec. 1021 The offense of escape in the second degree is raised from a misdemeanor to a class C felony.
- Sec. 1022 The offense of promoting prison contraband in the first degree is raised from a class C felony to a class B felony.
- Sec. 1023 The offense of promoting prison contraband in the second degree is raised from a petty misdemeanor to a class C felony.
- Sec. 1024 The offense of bail jumping in the first degree is redefined to include intentional failure to appear in connection with a charge of having committed a class C felony, as well as class A or class B felonies.

- Sec. 1025 The offense of bail jumping in the second degree is redefined to include intentional failure to appear in connection with a charge of having committed a misdemeanor or petty misdemeanor.
- Sec. 1029 The offense of hindering prosecution in the first degree is redefined to include assistance rendered in connection with a class C felony, as well as class A or class B felonies.
- Sec. 1041 This section, sections 1042 to 1044, section 1050, and section 1051, pertaining to corrupt influence and abuse of public office, are eliminated, leaving this subject area to be dealt with in separate legislation, such as legislation covering ethics and standards of conduct in government.
- Sec. 1074 The offense of intimidating a juror is raised from a class C felony to a class B felony.
- Sec. 1075 The offense of jury tampering is raised from a misdemeanor to a class C felony.

#### Chapter 11 - Offenses Against Public Order

- Sec. 1100 Definitions related to animals and cruelty to animals are added.
- Sec. 1101 The offense of disorderly conduct through creation of a hazardous or physically offensive condition by an act which serves no legitimate purpose is amended to refer to such an act which is not performed under an authorized license or permit.
- Sec. 1107 The offense of loitering is eliminated.
- Sec. 1109 The offense of cruelty to animals, dealt with in this section and in section 1110, is changed to incorporate the substance of the existing law on the subject.

#### Chapter 12 - Offenses Against Public Health and Morals

- Sec. 1220 The definition of "player", for purposes of gambling offenses, is redefined to specify that a player must be a person over the age of majority who engages in social gambling solely as a contestant or bettor on equal terms with the other participants without receiving or becoming entitled to receive something



of value or any profit other than his personal gambling winnings. "Social gambling" is also defined, to mean gambling or a contest of chance in which the only participants are players and from which no person, corporation, or other business entity receives or becomes entitled to receive something of value or any profit, directly or indirectly, other than as a player, from any source, fee, remuneration connected with the gambling, or from such activity as arrangement or facilitation of the game, or permitting the use of premises, or selling or supplying for profit refreshments, food, drink service, or entertainment to participants, players, or spectators.

Sec. 1240 This section and the remaining sections of the Code (to section 1256), pertaining to offenses related to drugs and intoxicating compounds, are revised to incorporate the schedules of regulated substances in a manner consistent with the Federal Comprehensive Drug Abuse Prevention and Control Act of 1970 (Public Law 91-513); to provide that the least serious offense of possession of less than one ounce of marijuana (or of certain other substances listed in schedule V) is punishable as a petty misdemeanor; and to provide that a first offender may be placed on probation without a judgment of guilt and, if he fulfills the terms and conditions of probation and was not over twenty years of age at the time of the offense, may have the official records relating to his arrest, indictment or information, trial, finding of guilt, and dismissal and discharge expunged.

Finally, it is noted that in addition to the above listings, the Legislature amended the Hawaii Penal Code in several respects to correct technical and mechanical errors and to make certain stylistic changes.