

Hawaii Statutes

DIVISION 1. GOVERNMENT

TITLE 4. STATE ORGANIZATION AND ADMINISTRATION, GENERALLY

CHAPTER 28. ATTORNEY GENERAL

PART V. ORGANIZED CRIME UNIT

[§28-71] Organized crime unit. There is established in the department of the attorney general an organized crime unit.

The organized crime unit shall consist of attorneys, and other specialized personnel necessary to implement this section. They shall be appointed by the attorney general who shall fix their compensation. Every attorney and specialist shall be entitled to hold the attorney's and specialist's position during good behavior, subject to removal by the attorney general only as provided in chapter 76.

The organized crime unit shall:

- (1) Receive, gather, and analyze information;
- (2) Develop tactical and strategic intelligence;
- (3) Assist in control of organized criminal activity;
- (4) Provide technical assistance and training to county law enforcement agencies in the detection and prosecution of organized crime; and
- (5) Provide with the attorney general's approval specialized personnel and technological equipment for the use of law enforcement agencies in the State with respect to organized crime.

For purposes of this section, "organized crime" means the unlawful activities of the members of an organized association engaged in supplying illegal goods and services, including but not limited to gambling, prostitution, loan sharking, narcotics, labor racketeering, and other unlawful activities of members of such organizations. [L 1971, c 108, §1; gen ch 1993]

TITLE 18. EDUCATION

CHAPTER 302A. EDUCATION

PART IV. PROVISIONS AFFECTING SYSTEM STRUCTURE

B. ACCOUNTABILITY

[§302A-1002] Reporting of crime-related incidents. The board shall adopt rules pursuant to chapter 91 to:

(1) Require a report to appropriate authorities from a teacher, official, or other employee of the department who knows or has reason to believe that an act has been committed or will be committed, which:

(A) Occurred or will occur on school property during school hours or during activities supervised by the school; and

(B) Involves crimes relating to arson, assault, burglary, disorderly conduct, dangerous weapons, dangerous drugs, harmful drugs, extortion, firearms, gambling, harassment, intoxicating drugs, marijuana or marijuana concentrate, murder, attempted murder, sexual offenses, rendering a false alarm, criminal property damage, robbery, terroristic threatening, theft, or trespass;

(2) Establish procedures for disposing of any incident reported; and

(3) Impose, in addition to any other powers or authority the department may have to discipline school officials, appropriate disciplinary action for failure to report these incidents, including probation, suspension, demotion, and discharge of school officials. [L 1996, c 89, pt of §2]

DIVISION 2. BUSINESS

TITLE 25. PROFESSIONS AND OCCUPATIONS

CHAPTER 455. COUNTY LICENSES

PART III. LODGING OR TENEMENT HOUSES, HOTELS AND BOARDING HOUSES

§445-95 Conditions of license. A lodging or tenement house, group home, group residence, group living arrangement, hotel, or boardinghouse, license shall be issued upon the following express conditions, which shall be incorporated in the license:

(1) The licensee shall not permit noisy or disorderly conduct in the building or buildings;

(2) No person engaging in acts of prostitution shall be allowed to reside

therein or resort thereto;

(3) No intoxicating liquor or other intoxicating substance shall be furnished or sold therein, except as authorized by law;

(4) The building or buildings and premises licensed shall be kept in good sanitary condition, in accordance with law and with the orders of the agent of the department of health;

(5) The police, agents of the licensing department, agents of the state department of health and agents of the appropriate county agencies responsible for compliance with the county's building and zoning codes shall at all times have access for purposes of inspection to enforce or administer this chapter and other applicable laws or rules;

(6) No gaming shall be allowed;

(7) The licensee, if a lodging or tenement house, group home, group residence, group living arrangement, or boardinghouse shall keep records identifying its tenants, lodgers, or boarders; and

(8) No facility shall deliver or purport to deliver health care services or treatment unless it is licensed, certified, or contracted for by the State or other governmental agencies to do so. [L 1896, c 64, §71; RL 1925, §2056; RL 1935, §2478; RL 1945, §7081; RL 1955, §155-62; am L Sp 1959 2d, c 1, §19; HRS §445-95; am L 1986, c 149, §5; am L 1987, c 333, §6; am L 1990, c 164, §17]

DIVISION 5. CRIMES AND CRIMINAL PROCEDURE

TITLE 37. HAWAII PENAL CODE

CHAPTER 706. DISPOSITION OF CONVICTED DEFENDANTS

PART I. PRE-SENTENCING INVESTIGATION AND REPORT, AUTHORIZED DISPOSITION, AND CLASSES OF FELONIES

§706-606.5 Sentencing of repeat offenders. (1) Notwithstanding section 706-669 and any other law to the contrary, any person convicted of murder in the second degree, any class A felony, any class B felony, or any of the following class C felonies: section 707-703 relating to negligent homicide in the first degree; 707-711 relating to assault in the second degree; 707-713 relating to reckless endangering in the first degree; 707-716 relating to terroristic threatening in the first degree; 707-721 relating to unlawful imprisonment in the first degree; 707-732 relating to sexual assault or rape in the third degree; 707-735 relating to sodomy in the third degree; 707-736 relating to sexual abuse in the first degree; 707-751 relating to promoting child abuse in the second degree; 707-766 relating to extortion in the second degree; 708-811 relating to burglary in the second degree; 708-821 relating to criminal property damage in the second degree; 708-831 relating to theft in the first degree as amended by Act 68, Session Laws of Hawaii 1981; 708-831 relating to theft in the second degree; 708-835.5 relating to theft of livestock; 708-836 relating to unauthorized control of propelled vehicle; 708-852 relating to forgery in the second degree; 708-854 relating to criminal possession of a forgery device; 708-875 relating to trademark counterfeiting; 710-1031 relating to intimidation of a correctional worker; 710-1071 relating to intimidating a witness; 711-1103 relating to riot;

712-1203 relating to promoting prostitution in the second degree; 712-1221 relating to gambling in the first degree; 712-1224 relating to possession of gambling records in the first degree; 712-1243 relating to promoting a dangerous drug in the third degree; 712-1247 relating to promoting a detrimental drug in the first degree; 134-7 relating to ownership or possession of firearms or ammunition by persons convicted of certain crimes; 134-8 relating to ownership, etc., of prohibited weapons; 134-9 relating to permits to carry, or who is convicted of attempting to commit murder in the second degree, any class A felony, any class B felony, or any of the class C felony offenses enumerated above and who has a prior conviction or prior convictions for the following felonies, including an attempt to commit the same: murder, murder in the first or second degree, a class A felony, a class B felony, any of the class C felony offenses enumerated above, or any felony conviction of another jurisdiction shall be sentenced to a mandatory minimum period of imprisonment without possibility of parole during such period as follows:

(a) One prior felony conviction:

(i) Where the instant conviction is for murder in the second degree or attempted murder in the second degree--ten years;

(ii) Where the instant conviction is for a class A felony--six years, eight months;

(iii) Where the instant conviction is for a class B felony--three years, four months;

(iv) Where the instant conviction is for a class C felony offense enumerated above--one year, eight months;

(b) Two prior felony convictions:

(i) Where the instant conviction is for murder in the second degree or attempted murder in the second degree--twenty years;

(ii) Where the instant conviction is for a class A felony--thirteen years, four months;

(iii) Where the instant conviction is for a class B felony--six years, eight months;

(iv) Where the instant conviction is for a class C felony offense enumerated above--three years, four months;

(c) Three or more prior felony convictions:

(i) Where the instant conviction is for murder in the second degree or attempted murder in the second degree--thirty years;

(ii) Where the instant conviction is for a class A felony--twenty years;

(iii) Where the instant conviction is for a class B felony--ten years;

(iv) Where the instant conviction is for a class C felony offense enumerated above--five years.

(2) Except as in subsection (3), a person shall not be sentenced to a mandatory minimum period

of imprisonment under this section unless the instant felony offense was committed during such period as follows:

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

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

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

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

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

(6) For purposes of this section:

- (a) Convictions under two or more counts of an indictment or complaint shall be considered a single conviction without regard to when the convictions occur;
- (b) A prior conviction in this or another jurisdiction shall be deemed a felony conviction if it was punishable by a sentence of death or of imprisonment in

excess of one year;

(c) A conviction occurs on the date judgment is entered. [L 1976, c 181, §1; am L 1979, c 98, §1; am L 1980, c 284, §1; am L 1981, c 69, §1; am L 1986, c 314, §17; am L 1987, c 181, §3; am L 1990, c 28, §2; am L 1996, c 87, §1; am L 1997, c 277, §2]

Note

Section 707-703 as amended relates to negligent homicide in the second degree.

Sections 707-735 and 707-736, referred to in text, are repealed.

Cross References

Former conviction in another jurisdiction, see §706-665.

Negligent homicide in the first degree, see §707-702.5.

COMMENTARY ON §706-606.5

This section was added by Act 181, Session Laws 1976. Finding a clear danger to the people of Hawaii in the high incidence of offenses being committed by repeat offenders, the legislature felt it necessary to provide for mandatory terms of imprisonment without possibility of parole in cases of repeated offenses by prior offenders.

House Conference Committee Report No. 32, Senate Conference Committee Report No. 33.

Act 98, Session Laws 1979, amended this section to provide that persons convicted of any of the crimes enumerated be punished as repeat offenders if they are subsequently convicted of any of the enumerated offenses within the time of the maximum sentence of the prior conviction. Under the prior law, a person had to be convicted of the same enumerated crime on more than one occasion. The Legislature felt this amendment was needed to alleviate concerns that the repeat offender problem be dealt with seriously. Conference Committee Report No. 11.

Act 284, Session Laws 1980, completely revised this section. It expanded the list of offenses carrying the possibility of mandatory minimum sentences and divided the offenses into the two classes enumerated in subsections (1) and (2). Further, it introduced a degree of flexibility into the sentencing procedure by allowing the court, upon written opinion, to set a lesser minimum sentence than that prescribed if there were strong mitigating circumstances to warrant such action.

Act 314, Session Laws 1986, amended the repeat offender law so that mandatory minimum terms of imprisonment are increased as the severity of the repeat offense increases. Thus, the mandatory minimum term for a class A repeat offender is greater than that term for a class B repeat offender. The period of time during which a felon is considered to have a prior felony conviction is dependent on the seriousness of the prior felony; the more severe the prior crime, the longer it remains a prior conviction.

Only certain class C felonies were made subject to the repeat offender law since the legislature intended to have some latitude as to which of those crimes should fall within the repeat offender category. Conference Committee Report No. 51-86.

Act 181, Session Laws 1987, added felony convictions of another jurisdiction to the list of crimes ("prior felonies") which are considered in the sentencing of repeat offenders. The Act also added, to the list of applicable periods, that the period within which the repeat offender statute applies is the maximum possible prison term of the prior felony conviction of another jurisdiction. The Act repealed subparagraph 706-606.5(4)(a) to clarify that this section requires only one felony conviction prior to the felony for which the defendant is sentenced pursuant to this section. Senate Standing Committee Report No. 1130.

Act 87, Session Laws 1996, added the crime of unauthorized control of propelled vehicle to the class C felonies subject to repeat offender sentencing. The legislature found that vehicle thefts and property taken from the vehicles was a serious problem in the State, and that this kind of theft affected a significant number of visitors and residents. The Act also amended the section to prohibit the parole of repeat offenders prior to the expiration of their mandatory minimum terms of imprisonment. Senate Standing Committee Report No. 2598.

Act 277, Session Laws 1997, amended the section by including the offense of trademark counterfeiting in the list of offenses for repeat offenders. The legislature found that trademark counterfeiting was a recurring problem in Hawaii for retail boutiques and trademark products of the University of Hawaii, and that tourists are often target for the scams. The legislature believed that the Act would safeguard not only consumers from the sale of counterfeit products, but would also protect the reputation and quality of trademarks and ensure that trademarks are used for their legitimate and intended purposes. House Standing Committee Report No. 1620, Senate Standing Committee Report No. 759.

Case Notes

Not applicable to defendant who had no prior conviction for any offense for which now charged. 800 F.2d 861.

Where defendant contended, inter alia, that federal sentencing guidelines preempted use of Hawaii repeat offender statute, defendant's conviction was subject to the statute, which applied to offenses committed on federal enclaves; district court did not err in applying the statute. 105 F.3d 463.

"Prior conviction" includes convictions which occurred before the effective date of statute. 61 H. 262, 602 P.2d 914.

Sentencing under section--procedural requirements. 61 H. 262, 602 P.2d 914.

Statute as it applies to burglary in the first degree is not unconstitutional as violative of the cruel and unusual punishment, equal protection, due process, or ex post facto clauses. 61 H. 262, 602 P.2d 914.

Proof of legal representation. 61 H. 281, 602 P.2d 927.

Sufficiency of evidence of prior conviction. 61 H. 281, 602 P.2d 927.

Mandatory minimum sentence for repeat offenders of §712-1242 not constitutionally proscribed. 61 H. 285, 602 P.2d 930.

Requirement of notice of intended application of section. 61 H. 285, 602 P.2d 930.

State must show defendant was represented by counsel at prior conviction or had waived such representation. 61 H. 285, 602 P.2d 930.

Conviction on multiple counts considered as one prior conviction. 63 H. 509, 630 P.2d 633.

Lesser mandatory minimum sentence under subsection (3) may be imposed for persons convicted prior to effective date of 1980 amendment but sentenced after it. 64 H. 210, 638 P.2d 319.

Not ambiguous. 66 H. 182, 658 P.2d 882.

Section does not apply to attempted felonies. 67 H. 476, 691 P.2d 1169.

Sentence is illegal if not imposed on repeat offender in compliance with statute's requirements. 67 H. 531, 696 P.2d 344.

Mandatory minimum sentence may not run consecutively to sentence for underlying conviction. 67 H. 616, 699 P.2d 988.

"Conviction" refers to judgment entered upon finding of guilt. Two sentences on the same day for separate offenses charged in two indictments are two convictions. 68 H. 124, 706 P.2d 1293.

Defendant's prior four-year sentence as young adult is the "maximum sentence of the prior conviction". 68 H. 169, 706 P.2d 1304.

Defendant's two prior convictions did not merge into one prior conviction. 71 H. 153, 785 P.2d 1314.

A sentencing court may order that a mandatory minimum term of imprisonment imposed under §706-660.1 be served consecutively to a mandatory period of imprisonment imposed under this section in connection with a separate felony conviction arising out of a charge contained in the same indictment or complaint. 84 H. 476, 935 P.2d 1021.

Section divests sentencing court of authority to impose consecutive mandatory minimum periods of imprisonment

on a defendant convicted of multiple felony counts charged in the same indictment or complaint. 84 H. 476, 935 P.2d 1021.

In determining voluntariness of guilty plea, judge should have established that petitioner was aware of mandatory minimum sentence to same extent as petitioner's awareness of maximum sentence. 9 H. App. 122, 826 P.2d 440.

No merit to defendant's points on appeal that contended that: (1) circuit court violated right to due process when it assumed role of prosecutor and attempted to establish a record on which to base a minimum mandatory sentence; and (2) imposition of mandatory minimum sentence was unauthorized because circuit court's finding that defendant had prior felony conviction was not supported by sufficient evidence. 9 H. App. 583, 854 P.2d 238.

CHAPTER 708A. MONEY LAUNDERING

§708A-2 Definitions. As used in this chapter, unless the context otherwise requires:

"Proceeds" means property of any kind acquired or derived directly or indirectly from, produced through, realized through, or caused by an act or omission.

"Property" means anything of value, including any interest, benefit, privilege, claim, or right with respect to anything of value, whether real or personal, tangible or intangible.

"Specified unlawful activity" means any act, or series of acts, that:

- (a) Constitutes a felony under the laws of this State;
- (b) If occurring outside this State, may be punishable by confinement for more than one year under the laws of the jurisdiction in which the act occurred;
- (c) Involves an act or acts constituting the offense of gambling, criminal property damage, extortion, theft, or prostitution or a drug offense under chapters 329, 329C, or part IV of chapter 712 or any firearm offense; or
- (d) If occurring outside this State, would constitute the offense of gambling, criminal property damage, extortion, theft, or prostitution or a drug offense under chapters 329, 329C, or part IV of chapter 712 or any firearm offense under the laws of this State.

"Transaction" includes a purchase, sale, trade, loan, pledge, investment, gift, transfer, transmission, delivery, deposit, withdrawal, payment, transfer between accounts, exchange of currency, extension of credit, purchase, sale, or exchange of any monetary instrument, use of a safe deposit box, or any other acquisition or disposition of property by whatever means effected.

"Unlawful activity" means any act that is chargeable or indictable as an offense of any degree or class under the laws of this State or under federal law or, if the act occurred in a jurisdiction other than this State, would be chargeable or indictable as an offense of any degree or class under the laws of this State or under federal law. [L 1995, c 119, pt of §2; am L 1996, c 22, §1]

Revision Note

Paragraphs redesignated pursuant to §23G-15(1).

COMMENTARY ON §708A-2

Act 22, Session Laws 1996, amended this section by replacing the word "state" with the word "jurisdiction" in the definitions of "specified unlawful activity" and "unlawful activity". The legislature intended to clarify that the Money Laundering Act applied not only to activities occurring within the State of Hawaii or the United States, but also to activities occurring outside the United States. House Standing Committee Report No. 375-96, Senate Standing Committee Report No. 2602.

PART III. GAMBLING OFFENSES

CHAPTER 712. OFFENSES AGAINST PUBLIC HEALTH AND MORALS

PART III. GAMBLING OFFENSES

§712-1220 Definitions of terms in this part. In this part unless a different meaning plainly is required, the following definitions apply.

(1) "Advance gambling activity". A person "advances gambling activity" if he engages in conduct that materially aids any form of gambling activity. Conduct of this nature includes but is not limited to conduct directed toward the creation or establishment of the particular game, contest, scheme, device, or activity involved, toward the acquisition or maintenance of premises, paraphernalia, equipment, or apparatus therefor, toward the solicitation or inducement of persons to participate therein, toward the actual conduct of the playing phases thereof, toward the arrangement of any of its financial or recording phases, or toward any other phase of its operation. A person advances gambling activity if, having substantial proprietary control or other authoritative control over premises being used with his knowledge for purposes of gambling activity, he permits that activity to occur or continue or makes no effort to prevent its occurrence or continuation. A person advances gambling activity if he plays or participates in any form of gambling activity.

(2) "Bookmaking" means advancing gambling activity by accepting bets from members of the public upon the outcomes of future contingent events.

(3) "Contest of chance" means any contest, game, gaming scheme, or gaming device in which the outcome depends in a material degree upon an element of chance, notwithstanding that skill of the contestants may also be a factor

therein.

(4) "Gambling". A person engages in gambling if he stakes or risks something of value upon the outcome of a contest of chance or a future contingent event not under his control or influence, upon an agreement or understanding that he or someone else will receive something of value in the event of a certain outcome. Gambling does not include bona fide business transactions valid under the law of contracts, including but not limited to contracts for the purchase or sale at a future date of securities or commodities, and agreements to compensate for loss caused by the happening of chance, including but not limited to contracts of indemnity or guaranty and life, health, or accident insurance.

(5) "Gambling device" means any device, machine, paraphernalia, or equipment that is used or usable in the playing phases of any gambling activity, whether that activity consists of gambling between persons or gambling by a person involving the playing of a machine. However, lottery tickets and other items used in the playing phases of lottery schemes are not gambling devices within this definition.

(6) "Lottery" means a gambling scheme in which:

- (a) The players pay or agree to pay something of value for chances, represented and differentiated by numbers or by combinations of numbers or by some other medium, one or more of which chances are to be designated the winning ones; and
- (b) The winning chances are to be determined by a drawing or by some other method based on an element of chance; and
- (c) The holders of the winning chances are to receive something of value.

(7) "Mutuel" means a form of lottery in which the winning chances or plays are not determined upon the basis of a drawing or other act on the part of persons conducting or connected with the scheme, but upon the basis of the outcome or outcomes of a future contingent event or events otherwise unrelated to the particular scheme.

(8) "Player" means a person who engages in gambling solely as a contestant or bettor.

(9) "Profit from gambling activity". A person "profits from gambling activity" if he accepts or receives money or other property pursuant to an agreement or understanding with any person whereby he participates or is to participate in the proceeds of gambling activity.

(10) "Social gambling" is defined in section 712-1231.

(11) "Something of value" means any money or property, any token, object, or article exchangeable for money or property, or any form of credit or promise directly or indirectly contemplating transfer of money or property or of any interest therein, or involving extension of a service or entertainment. [L 1972, c 9, pt of §1; am L 1973, c 201, pt of §1]

COMMENTARY ON §712-1220

This section provides definitions of terms used repeatedly in this Part of Chapter 712, a discussion of the definitions is incorporated in the Commentary on the substantive sections employing the defined terms.

SUPPLEMENTAL COMMENTARY ON §712-1220

Act 201, Session Laws 1973, made several changes to the definitions as previously contained in the Proposed Draft of the Code. In Item (1), the phrase "acting other than as a player" was deleted, so that any person, including a player, advances gambling activity if the person engages in conduct that materially aids any form of gambling activity. Also, the last sentence was added, which states: "A person advances gambling activity if he plays or participates in any form of gambling activity." In Item (2) the term "bookmaking" previously was defined as "advancing gambling activity by unlawfully accepting bets from members of the public as a business, rather than in a casual or personal fashion, upon the outcomes of future contingent events." The term "unlawfully" and the phrase "as a business rather than in a casual or personal fashion" were deleted. In Item (6), "lottery" was changed from "an unlawful gambling scheme" to "a gambling scheme."

In Item (8), the Proposed Code, as well as the Code as adopted in 1972, had contained an extensive definition of the word "player" in an attempt to describe a player in a social gambling game. Act 201 deleted that definition and instead defined "player" as a person who "engages in gambling solely as a contestant or bettor." In Item (9), the phrase "other than as a player" was deleted, so that even players may "profit from gambling activity." Item (10) is a new addition stating that "social gambling" is defined in §712-1231. In Item (11) the phrase "or a privilege of playing at a game or scheme without charge" was deleted from the definition of "something of value."

§712-1221 Promoting gambling in the first degree. (1) A person commits the offense of promoting gambling in the first degree if the person knowingly advances or profits from gambling activity by:

- (a) Engaging in bookmaking to the extent that the person receives or accepts in any seven-day period more than five bets totaling more than \$500; or
- (b) Receiving in connection with a lottery, or mutuel scheme or enterprise, money or written records from a person other than a player whose chances or plays are represented by such money or records; or
- (c) Receiving or having become due and payable in connection with a lottery, mutuel, or other gambling scheme or enterprise, more than \$1,000 in any seven-day period played in the scheme or enterprise.

(2) Promoting gambling in the first degree is a class C felony. [L 1972, c 9, pt of §1; am L 1973, c 201, pt of §1; am L 1983, c 161, §1; am L 1987, c 83, §1; gen ch 1992]

§712-1222 Promoting gambling in the second degree. (1) A person commits the offense of

promoting gambling in the second degree if the person knowingly advances or profits from gambling activity.

(2) Promoting gambling in the second degree is a misdemeanor. [L 1972, c 9, pt of §1; am L 1973, c 201, pt of §1; am L 1987, c 83, §2; gen ch 1992]

§712-1222.5 Promoting gambling aboard ships. (1) A person commits the offense of promoting gambling aboard ships if the person knowingly advances or profits from gambling activity by:

(a) Managing, supervising, controlling, operating, or owning, either alone or in association with others, a gambling ship;

(b) Managing, supervising, controlling, operating, or owning, either alone or in association with others, any craft which embarks from any point within the State, and disembarks at the same or another point within the State, during which the person intentionally causes or knowingly permits gambling activity to be conducted, whether within or without the waters of the State; or

(c) Transporting, conveying, or carrying any person to a gambling ship or a craft described in paragraph (b).

(2) In this section:

(a) "Craft" includes every boat, ship, vessel, barge, hulk, or other thing capable of floating; and

(b) "Gambling ship" means any craft kept, operated, or maintained for the purpose of gambling, whether within or without the waters of the State and whether it is anchored, moored, lying to, or navigating.

(3) This section shall not apply to gambling activity conducted during travel from foreign nations or another state or territory of the United States to the point of first entry into state waters or during travel to foreign nations or another state or territory of the United States from the point of final exit from state waters; provided that nothing herein shall preclude prosecution for any offense under this part.

(4) Promoting gambling aboard ships is a class C felony. [L 1990, c 196, §1; am L 1992, c 57, §2; gen ch 1992]

§712-1223 Gambling. (1) A person commits the offense of gambling if the person knowingly advances or participates in any gambling activity.

(2) Gambling is a misdemeanor. [L 1972, c 9, pt of §1; am L 1973, c 201, pt of §1; gen ch 1993]

COMMENTARY ON §§712-1221 TO 1223

Part III of Chapter 712 adopts a comprehensive pattern of gambling legislation proposed in Michigan^[1] and enacted in New York.^[2] These three sections of the Code initiate a comprehensive revision of Hawaii's gambling laws. For the most part the coverage of the previous law has been preserved, although the emphasis has been changed in several instances. The Code provides penalties for those who exploit gambling activity; however, at the same time, the Code introduces some limited liberalizations in the area which reflect the actual attitude of society

toward gambling.

Part III provides inclusive coverage for all forms of gambling exploitation. Section 712-1221 covers exploitations of gambling in the form of "advancing" or "profiting" from gambling activity.[3] It is aimed at large-scale gambling and is the most aggravated offense in this area. Under this section, a class C felony sanction is provided for a person who (a) engages in bookmaking to the extent that the person receives or accepts in any one day more than five bets totaling more than \$500, (b) receives in connection with a lottery or mutual scheme money or written records from a person other than a player whose chances or plays are represented by such money or records, or (c) receives in connection with a lottery, mutual, or other scheme or enterprise more than \$1,000 in any one day of money played in the scheme or enterprise.

"Bookmaking" is defined in §712-1220(2) as taking bets "upon the outcomes of future contingent events." The definition of "lottery" in §712-1220(6) is comprehensive as was that provided by the prior law,[4] without sacrificing clarity. The definition of "mutuel" adds a specific definition not previously contained in Hawaii legislation.[5]

A class C felony is imposed for violation of §712-1221 in recognition of the large-scale exploitive nature of the offense.

Section 712-1222 provides misdemeanor liability for promoting gambling in the second degree if a person knowingly profits from gambling activity. This section covers the small-time promoter who profits from gambling activity when the promoter receives money or other property as a result of participation in the proceeds of any gambling activity.

Act 201, Session Laws 1973, amended §712-1222 by deleting therefrom the advancing of gambling activities and limiting it to profiting from gambling activities. This was done because advancing gambling activity is covered by the new offense of gambling. Senate Standing Committee Report No. 806 (1973).

Section 712-1223 provides misdemeanor liability for gambling if a person knowingly advances or participates in any gambling activity. This is a new section which was added by Act 201, Session Laws 1973. The Legislature stated that gambling in all its aspects is to be prohibited except in the limited case of "social gambling" as set forth in §712-1231. Thus, in Standing Committee Report No. 806, the Senate Committee on Judiciary noted:

"While the second degree promoting offense treats the problem of 'profiting' from gambling in isolation, a new offense of 'gambling' has been created to cover all other acts related to gambling for which evidence of profit need not be available nor applicable. The point of this is to obtain a clearer statement that gambling in all its aspects is prohibited except in the limited case of 'social gambling'.

Under the existing law the broad scope of the second degree promoting offense requires that 'social

gambling' be considered in a context that includes profiting from gambling. However, 'social gambling' and profiting are mutually exclusive by definition except in the case of the player's winnings. This seems to be a point of confusion. As proposed, the differential exclusion of social gambling is permitted to be considered apart from the profiting problem, and it is thought that thus, a more systematic treatment is achieved."

The former statutory law is all inclusive in condemning as criminal any gambling regardless of how innocuous. Under prior law it was a misdemeanor to set up or assist in any type of lottery scheme,[6] to sell or buy a ticket or chance in a lottery scheme,[7] to conduct or play any game of chance or any game where money is lost or won or to be present where such games occur,[8] to exhibit or expose to view in a barricaded place any gambling paraphernalia,[9] to be present in a barricaded place where gambling paraphernalia is exposed to view,[10] to conduct or assist in any bunco games (such as "three card monte" or the "shell game"),[11] to bet on the outcome of any sporting event,[12] and to allow another person to use any building or vessel for gambling activity.[13] The Code recognizes distinctions in gambling which were not recognized in prior law. It provides increased penalties for exploitive conduct, but exempts social gambling and the casual bet as criminal offenses. The Code's sections strengthen the law by providing a class C felony penalty for the "professional" promoter, instead of a misdemeanor penalty as provided under previous law. By broadly defining the terms "advancing gambling activity" and "promoting gambling activity" it makes unnecessary the explicit listing of various games of chance that was present in previous statutory law.[14] Small-time gamblers are punished as misdemeanants under the Code, the same penalty available under the former law.

SUPPLEMENTAL COMMENTARY ON §§712-1221 TO 1223

Act 161, Session Laws 1983, amended §712-1221(1) so that a person may be prosecuted under this section if that person owed more than \$1,000 in any one day as a result of a gambling scheme. The prior law prohibited as evidence, the receipt of wagered money, thereby requiring police to witness the actual transfer of money before making an arrest. The amendment enables police to prosecute bookmakers for gambling based on the contents of seized bookmaking records. Senate Standing Committee Report No. 721, House Standing Committee Report No. 440.

Act 83, Session Laws 1987, amended §712-1221 by changing the one-day period to seven days because there were difficulties with proving promotion of gambling within a one-day period. The extension of the time period would also allow for more effective law enforcement pursuant to this section. Senate Standing Committee Report No. 545.

Act 83, Session Laws 1987, amended §712-1222 by making changes to this section for the purpose of conforming

with §712-1221. Conformity was desired with §712-1221 so that if there is insufficient evidence to prove the first degree offense, a person could be found guilty of the second degree offense. Senate Standing Committee Report No. 545.

Act 196, Session Laws 1990, added §712-1222.5 which makes it illegal to promote gambling aboard ships. The legislature found that intrastate gambling junkets would be detrimental to the State's family oriented tourist industry. House Standing Committee Report No. 466-90.

Act 57, Session Laws 1992, amended §712-1222.5 to clarify that gambling activities which are conducted during travel to and from foreign nations and Hawaii are exempt to the same extent as gambling activities which are conducted during travel to and from other states and territories of the United States and Hawaii. Act 57 further amended this section to conform subsection and paragraph designations to the style used in the Code. House Standing Committee Report No. 1198-92, Senate Standing Committee Report No. 1947.

§§712-1221 To 1223 Commentary:

1. Prop. Mich. Rev. Cr. Code, Chapter 61.
2. N.Y.R.P.L., Article 225.
3. See §712-1220(1) and (9).
4. H.R.S. §746-1.
5. Cf. id.
6. Id. §746-2.
7. Id. §746-3.
8. Id. §746-4.
9. Id. §746-5.
10. Id. §746-6.
11. Id. §746-7.
12. Id. §746-8.
13. Id. §746-9.
14. E.g., id. §746-4.

§712-1224 Possession of gambling records in the first degree. (1) A person commits the offense of possession of gambling records in the first degree if the person knowingly possesses, produces, or distributes any writing, paper, instrument, or article:

(a) Of a kind commonly used in the operation or promotion of a bookmaking scheme or enterprise, and constituting, reflecting, or representing more than five bets totaling more than \$500; or

(b) Of a kind commonly used in the operation, promotion, or playing of a lottery or mutuel scheme or enterprise, and constituting, reflecting, or representing more than one hundred plays or chances therein or one play or chance wherein the winning amount exceeds \$5,000.

(2) Possession of gambling records in the first degree is a class C felony. [L 1972, c 9, pt of §1; am L 1973, c 201, pt of §1; am L 1980, c 174, §1; gen ch 1993]

§712-1225 Possession of gambling records in the second degree. (1) A person commits the offense of possession of gambling records in the second degree if the person knowingly possesses any writing, paper, instrument, or article:

(a) Of a kind commonly used in the operation or promotion of a bookmaking scheme or enterprise; or

(b) Of a kind commonly used in the operation, promotion, or playing of a lottery or mutuel scheme or enterprise.

(2) Possession of gambling records in the second degree is a misdemeanor. [L 1972, c 9, pt of §1; am L 1973, c 201, pt of §1; gen ch 1993]

§712-1226 Possession of a gambling device. (1) A person commits the offense of possession of a gambling device if the person manufactures, sells, transports, places, possesses, or conducts or negotiates any transaction affecting or designed to affect ownership, custody, or use of any gambling device, knowing it is to be used in the advancement of gambling activity which is not social gambling.

(2) Possession of a gambling device is a misdemeanor. [L 1972, c 9, pt of §1; am L 1973, c 201, pt of §1; gen ch 1993]

COMMENTARY ON §§712-1224 TO 1226

These sections enlarge the scope of the previous law by adding inchoate gambling offenses involving the possession of gambling records or devices, thus permitting police intervention at the anticipatory stage of gambling.

The sections also complement and bolster the coverage of §§712-1221, 1222, and 1223.

Sections 712-1224 and 1225 concern the possession of gambling records. These records may consist of any writing, paper, instrument, or article of a kind "commonly used" in a bookmaking, lottery, or mutuel scheme. The gradation of penalties into a class C felony and a misdemeanor is made on the same basis as the gradation of penalties for promoting gambling activities (§§712-1221 and 1222).

Section 712-1226 makes it a misdemeanor to manufacture, sell, transport, or possess a gambling device, knowing it is to be used in the advancement of gambling activity which is not social gambling. The term "gambling device" is defined by §712-1220(5). The definition specifically excludes from its scope lottery tickets to avoid needless

overlapping of §§712-1224 and 1225 with §712-1226.

These sections are needed and justifiable for two reasons. First, because of the nature of gambling offenses, the State often cannot prove the actual promotion of gambling activity while at the same time it can easily prove the culpable possession of gambling records or devices. In view of the defense afforded by §712-1227, possession of gambling records and devices provides a legitimate basis for permitting police intervention and imposing penal liability. Secondly, by allowing the State to prosecute for possession of records or devices, society is able to restrict unlawful gambling activity while it is in its preparatory stage. Especially is this so when the definition of the possessory offense relating to gambling devices is drawn so as to cover trafficking in the devices.

The coverage of the previous statutory law is sketchy in regard to the possession of gambling records or devices. A person found in possession of a lottery ticket was guilty of a misdemeanor.[1] There was no express provision penalizing possession of bookmaking records or receipts or gambling devices. The Code fills this gap and provides a basis for earlier police intervention.

The existing case law holds that operating a pinball machine that gives free games upon the scoring of a certain amount of points is a form of gambling.[2] The Proposed Draft of the Code, as well as the Code when adopted in 1972, accepted this position. Originally, "gambling" turned on the possibility of receiving something of value.[3] "Something of value" included "a privilege of playing at a game or scheme without charge." Thus, possession of a pinball machine originally came within the scope of §712-1225. However, by Act 201, Session Laws 1973, the Legislature amended the definition of "something of value" by removing the phrase "or a privilege of playing at a game or scheme without charge." (See §712-1220(11), and Commentary thereon.) In commenting on the amendment, the Senate Committee on Judiciary, in Standing Committee Report No. 806 (1973) stated:

"This phrase refers to such activities as pinball and other games involving the winning of a privilege of playing another game without charge. Such winnings were previously allowed under Hawaii law. Your Committee finds that there is no good reason to include 'free game' as something of value from gambling."

These three sections were originally numbered as §§712-1223, 1224 and 1225 in the Code when adopted in 1972.

They were renumbered by Act 201, Session Laws 1973. Act 201 also made the following changes to these sections.

In §§712-1224 and 1225, the phrase "other than as a player" was deleted, so that even a person who is a player may be subject to the offense of possession of gambling records. Also, in §712-1224, the clause "and constituting, reflecting, or representing more than 500 plays or chances therein" was inserted to describe the type of records of

lottery or mutuel scheme that is necessary for the offense of possession of gambling records in the first degree.

SUPPLEMENTAL COMMENTARY ON §§712-1224 TO 1226

Act 174, Session Laws 1980, amended §712-1224 by expanding the offense to include persons who produce or distribute gambling records and by clarifying the definition and monetary amounts of such records. The purpose was to provide for more effective enforcement and to curb the number of pool tickets for extremely high amounts.
Senate Standing Committee Report No. 857-80, House Standing Committee Report No. 492-80.

§§712-1224 To 1226 Commentary:

1. H.R.S. §746-3.
2. Territory of Hawaii v. Uyehara, 42 Haw. 184 (1957); Territory of Hawaii v. Naumu, 43 Haw. 66 (1958).
3. §712-1220(4).

§712-1227 Possession of gambling records; defense. In any prosecution under sections 712-1224 and 1225, it is a defense that the writing, paper, instrument, or article possessed by the defendant was neither used nor intended to be used in the advancement of gambling activity, except for records used in social gambling. [L 1972, c 9, pt of §1; am L 1973, c 201, pt of §1]

COMMENTARY ON §712-1227

This section establishes a defense in a prosecution under §§712-1224 and 1225. It is a defense to such a prosecution that the record possessed is "neither used nor intended to be used in the advancement of gambling activity, except for records used in social gambling." In view of the relaxed standards provided in §§712-1224 and 1225 (i.e., possession of an article "of a kind commonly used..."), a defense has been provided for those defendants who are able to produce some evidence which raises a reasonable doubt that their possession of the records was preparatory to unlawful gambling.

This section was originally numbered as §712-1226, but was renumbered by Act 201, Session Laws 1973.

§712-1228 Gambling offenses; prima facie evidence. (1) Proof that a person knowingly possessed any gambling record specified in sections 712-1224 and 712-1225 or any gambling device in section 712-1226 is prima facie evidence that the person possessed the record or device with knowledge of its contents and character.

(2) In any prosecution under this part in which it is necessary to prove the occurrence of a sporting event, a published report of its occurrence in any daily newspaper, magazine, or other periodically printed publication of general circulation, shall be admissible in evidence and shall constitute prima facie evidence of the occurrence of the event. [L 1972, c 9, pt of §1; am L 1973, c 201, pt of §1]

COMMENTARY ON §712-1228

Offenses of possession of gambling records and gambling devices pose a special problem regarding proof of the requisite knowledge of the contents and character of the records or the device. In cases which require proof of the occurrence of sporting events, strict adherence to the rules of evidence would force the prosecution in its case in chief to incur great expense on an issue which may not realistically be in controversy. Therefore, this section provides two evidentiary rules designed to let the prosecutor get the case to the jury in situations where direct evidence is difficult or expensive to obtain and the weight of the logical inference in each situation is sufficient to warrant the special rule.

Act 201, Session Laws 1973, renumbered this section from §§712-1227 to 712-1228.

§712-1230 Forfeiture of property used in illegal gambling. Any gambling device, paraphernalia used on fighting animals, or birds, implements, furniture, personal property, vehicles, vessels, aircraft, or gambling record possessed or used in violation of this part, or any money or personal property used as a bet or stake in gambling activity in violation of this part, may be ordered forfeited to the State, subject to the requirements of chapter 712A. [L 1972, c 9, pt of §1; am L 1973, c 201, pt of §1; am L 1979, c 83, §1; am L 1989, c 261, §22; am L 1992, c 57, §3]

Cross References

Surrender or forfeiture of animals, see §711-1110.5.

COMMENTARY ON §712-1230

This section restates in general terms the previous law relating to forfeiture of gambling stakes, records, and devices.[1] The forfeiture is specifically made subject to the requirements of §701-119 which embodies a single procedure for the establishment of all forfeitures declared by the Penal Code. The procedure provides, as did the previous law,[2] for the protection of innocent owners of property which is involved in the commission of an offense. Intentionally omitted are prior provisions permitting a person who loses funds gambling to sue for recovery,[3] permitting a police officer, officer, or other person to sue to recover treble damages based on the amount lost (in which case one-half went to the person so prosecuting and one-half to the state for use for public schools),[4] and voiding instruments of indebtedness used in gambling.[5] These provisions are unrealistic, seldom, if ever, invoked, and unnecessary in view of the general forfeiture provision. This section was renumbered from §712-1229 to §712-1230, by Act 201, Session Laws 1973.

In *State v. Nobuhara*, 52 Haw. 319, 474 P.2d 707 (1970), the Hawaii Supreme Court ruled that certain moneys seized under a violation of former HRS §746-8, which proscribed betting on an athletic contest, could not be forfeited. The Court declared that there was no evidence to tie in the moneys with the betting activities and thus

could not be forfeited under HRS §746-12.

SUPPLEMENTAL COMMENTARY ON §712-1230

Act 83, Session Laws 1979, amended this section to better define the properties which may be forfeited when used in illegal gambling. Within this context, the legislature specifically intended that "only paraphernalia used in fighting animals and birds be susceptible to...forfeiture...as distinguished from the animals or birds themselves." Conference Committee Report No. 60. The Act also established a preponderance of evidence standard for courts to use in determining whether forfeiture should be ordered.

Act 57, Session Laws 1992, amended this section to clarify that forfeitures of property used in illegal gambling are subject to the requirements of chapter 712A. House Standing Committee Report No. 1198-92, Senate Standing Committee Report No. 1947.

Case Notes

Insufficient showing that property was integral part of illegal gambling operation. 5 H. App. 547, 705 P.2d 54.

§712-1230 Commentary:

1. See former H.R.S. §§746-11, 746-12.
2. Id. §746-13.
3. Id. §746-16.
4. Id. §746-18.
5. Id. §746-19.

§712-1231 Social gambling; definition and specific conditions, affirmative defense.

(a) Definition. "Social gambling" means gambling in which all of the following conditions are present:

- (1) Players compete on equal terms with each other; and
- (2) No player receives, or becomes entitled to receive, anything of value or any profit, directly or indirectly, other than the player's personal gambling winnings; and
- (3) No other person, corporation, unincorporated association, or entity receives or becomes entitled to receive, anything of value or any profit, directly or indirectly, from any source, including but not limited to permitting the use of premises, supplying refreshments, food, drinks, service, lodging or entertainment; and
- (4) It is not conducted or played in or at a hotel, motel, bar, nightclub,

cocktail lounge, restaurant, massage parlor, billiard parlor, or any business establishment of any kind, public parks, public buildings, public beaches, school grounds, churches or any other public area; and

(5) None of the players is below the age of majority; and

(6) The gambling activity is not bookmaking.

(b) Affirmative defense:

(1) In any prosecution for an offense described in [section] 712-1223, 712-1224, 712-1225 or 712-1226, a defendant may assert the affirmative defense that the gambling activity in question was a social gambling game as defined in [section] 712-1231(a).

(2) If the defendant asserts the affirmative defense, the defendant shall have the burden of going forward with evidence to prove the facts constituting such defense unless such facts are supplied by the testimony of the prosecuting witness or circumstance in such testimony, and of proving such facts by a preponderance of evidence.

(c) In any prosecution for an offense described in this part the fact that the gambling activity involved was other than a social gambling game shall not be an element of the offense to be proved by the prosecution in making out its prima facie case. [L 1973, c 201, pt of §1; gen ch 1993]

COMMENTARY ON §712-1231

Section 712-1231 is a completely new and rewritten section set forth by Act 201, Session Laws 1973. This section defines "social gambling" as gambling activity that meets all the prescribed conditions. These conditions are: (1) that all players engage as contestants on "equal terms"; (2) that no profiting be involved--other than the player's winnings; (3) that it should not be conducted at certain enumerated places, such as hotels, school grounds, public parks, any business establishment, etc.; (4) that no minor be involved in the game; and (5) that the gambling activity is not bookmaking. (Senate Standing Committee Report No. 806 (1973).)

With respect to the concept of prohibiting gambling in enumerated places, the Standing Committee Report states:

"Your Committee notes the addition of the concept that gambling in certain enumerated places such as hotels, public parks, etc.-- is prohibited and that gambling conducted in such places is not to come within the protected confines of 'social gambling.' It is felt that this addition to the law clarifies the Legislature's intent to prevent the intrusion of hotel and casino type operations into this State, as well as prevent exposure of gambling to children in public parks, school grounds, etc.

"In this connection, casual gambling activities in a social context, involving contests of skill, and conducted in

places other than those enumerated in the law, such as casual bets between golfers or bowlers would be 'social gambling'."

Section 712-1231 provides that in any prosecution for an offense described in §712-1223, 1224, 1225, or 1226, the defendant may assert the affirmative defense that the gambling activity was a social gambling game as defined in this section. In respect thereto, the Standing Committee Report No. 806 (1973), Senate Judiciary Committee, states:

"There has been considerable concern whether the affirmative defense provisions of the Hawaii Penal Code are constitutional. In that regard, your Committee understands that statutorily prescribed affirmative defenses have been held constitutional. See *Territory of Hawaii v. Shizuichi Yamamoto, et. al.*, 39 Haw. 556 (1952); *McKelvey v. United States*, 260 U.S. 353 (1922); *United States v. Sidney B. Rowlette, et. al.*, 297 F.2d 475 (1968); and *U.S. v. Carl Oslin Rumzy, Jr.* 446 F.2d 1184 (1971).

"A major change affected is the erasure of any mandatory requirement that the defendant utilize this affirmative defense. We note that this is an area of great concern. That is, whether the affirmative defense in the existing law forces the defendant, as a legal requirement, to testify in potential self- incrimination.

"Without addressing ourselves to any other application of the affirmative defense in the Hawaii Penal Code, your Committee notes the existing law was to provide in §712-1231(b) that a defendant's resort to the affirmative defense is discretionary. See *People v. Felder*, 334 N.Y.S. 2d 992 (1972).

"There appears to be some confusion as to the prosecutor's burden of proof in relation to the defense of social gambling. It is intended that the prosecution should not have the burden of proving as part of its prima facie case, that the gambling activity in question was other than a social gambling game. Accordingly, an explicit statement to that effect was included in §712-1231(c).

"In contrast, it is the intent that the defendant shall be entitled to acquittal on the basis of the affirmative defense only if the trier of the facts finds by a preponderance of the evidence the facts constituting the affirmative defense. In other words, the defendant has both the burden of going forward with the evidence and the burden of persuasion by a preponderance of evidence with respect to the affirmative defense of social gambling."

Case Notes

Defendants did not prove that no person other than players received or became entitled to receive anything of value. 2 H. App. 606, 638 P.2d 338.

CHAPTER 712A. FORFEITURE

§712A-4 Covered offenses. Offenses for which property is subject to forfeiture under this chapter are:

- (a) All offenses which specifically authorize forfeiture;
- (b) Murder, kidnapping, gambling, criminal property damage, robbery, bribery, extortion, theft, unauthorized entry into motor vehicle, burglary, money laundering, [trademark counterfeiting,] insurance fraud, promoting a dangerous, harmful, or detrimental drug, or commercial promotion of marijuana, which is chargeable as a felony offense under state law;
- (c) The manufacture, sale, or distribution of a controlled substance in violation of chapter 329, promoting detrimental drugs or intoxicating compounds, promoting pornography, promoting pornography for minors, or promoting prostitution, which is chargeable as a felony or misdemeanor offense, but not as a petty misdemeanor, under state law; and
- (d) The attempt, conspiracy, solicitation, coercion, or intimidation of another to commit any offense for which property is subject to forfeiture. [L 1988, c 260, pt of §1; am L 1991, c 166, §1; am L 1997, c 277, §3; am L 1998, c 155, §4 and c 307, §1]

COMMENTARY ON §712A-4

Act 277, Session Laws 1997, amended this section to include the offense of trademark counterfeiting in the offenses for which property is subject to forfeiture under the chapter. The legislature found that trademark counterfeiting was a recurring problem in Hawaii for retail boutiques and trademark products of the University of Hawaii, and that tourists are often the target for the scams. The legislature believed that the Act would safeguard not only consumers from the sale of counterfeit products, but would also protect the reputation and quality of trademarks and ensure that trademarks are used for their legitimate and intended purposes. House Standing Committee Report No. 1620, Senate Standing Committee Report No. 759.

Act 155, Session Laws 1998, made insurance fraud an offense subject to the property forfeiture law. The purpose of Act 155 was to minimize insurance fraud and maximize savings to Hawaii's consumers by clarifying insurance fraud laws and strengthening effective enforcement. House Standing Committee Report No. 1259-98, Senate Standing Committee Report No. 2554.

Act 307, Session Laws 1998, amended this section to authorize forfeiture of a person's property if the person is caught breaking into a motor vehicle. The legislature found that forfeiture of property has proven to be a successful deterrent to criminal activity. Including unauthorized entry into a motor vehicle as one of the offenses under this section should provide an effective deterrent to the class C felony. Because unauthorized entry into a motor vehicle included the elements of theft, criminal property damage, and burglary, already covered by the forfeiture law, the

legislature found that unauthorized entry into a motor vehicle should also be covered. Conference Committee Report No. 98.

TITLE 38. PROCEDURAL AND SUPPLEMENTARY PROVISIONS

CHAPTER 803. ARRESTS, SEARCH WARRANTS

PART IV. ELECTRONIC EAVESDROPPING

§803-44 Application for court order to intercept wire, oral, or electronic communications. The attorney general of this State, or a designated deputy attorney general in the attorney general's absence or incapacity, or the prosecuting attorney of each county, or a designated deputy prosecuting attorney in the prosecuting attorney's absence or incapacity, may make application to a circuit court judge, designated by the chief justice of the Hawaii supreme court, or any other circuit court judge or district court judge, if a circuit court judge has not been designated by the chief justice of the Hawaii supreme court, or is otherwise unavailable, in the county where the interception is to take place, for an order authorizing or approving the interception of wire, oral, or electronic communications, and such court may grant in conformity with section 803-46 an order authorizing, or approving the interception of wire, oral, or electronic communications by investigative or law enforcement officers having responsibility for the investigation of the offense as to which the application is made, when such interception may provide or has provided evidence of murder, kidnapping, or felony criminal property damage involving the danger of serious bodily injury as defined in section 707-700, or involving organized crime and any of the following felony offenses: extortion; bribery of a juror, of a witness, or of a police officer; receiving stolen property; gambling; and distribution of dangerous, harmful, or detrimental drugs. [L 1978, c 218, pt of §2; am L 1986, c 303, §4; am L 1989, c 164, §6]

CHAPTER 842. ORGANIZED CRIME

§842-1 Definitions. As used in this chapter:

"Enterprise" includes any sole proprietorship, partnership, corporation, association, and any union or group of individuals associated for a particular purpose although not a legal entity. "Organized crime" means any combination or conspiracy to engage in criminal activity as a significant source of income or livelihood, or to violate, aid or abet the violation of criminal laws relating to prostitution, gambling, loan sharking, drug abuse, illegal drug distribution, counterfeiting, extortion, corruption of law enforcement officers or other public officers or employers.

"Person" includes any individual or entity capable of holding a legal or beneficial interest in property and includes nonresident aliens.

"Racketeering activity" means any act or threat involving, but not limited to murder, kidnapping, gambling, criminal property damage, robbery, bribery, extortion, theft or prostitution, or any dealing in narcotic or other dangerous drugs which is chargeable as a crime under state law and punishable by imprisonment for more than one year.

"Unlawful debt" means a debt incurred or contracted in an illegal gambling activity or business or which is unenforceable under state law in whole or in part as to principal or interest because of the law relating to usury. [L 1972, c 71, pt of §2; am L 1990, c 27, §2; am L 1991,

c 175, §1]

§842-4 Prohibited affirmative defense. The affirmative defense of being a player in a social gambling game is not available to a person engaged in organized crime or who is connected directly or indirectly with persons who are engaged in organized crime. [L 1972, c 71, pt of §2]