

STAND. COM. REP. NO.

3043

Honolulu, Hawaii

MAR 23 2006

RE: H.B. No. 2299
H.D. 1
S.D. 1

Honorable Robert Bunda
President of the Senate
Twenty-Third State Legislature
Regular Session of 2006
State of Hawaii

Sir:

Your Committee on Judiciary and Hawaiian Affairs, to which was referred H.B. No. 2299, H.D. 1, entitled:

"A BILL FOR AN ACT RELATING TO CHAPTER 803,"

begs leave to report as follows:

The purpose of this measure is to require substantial compliance with the requirements of chapter 803 when a police officer enters a home to arrest a person suspected of a crime.

Your Committee received testimony in support of this measure from the Attorney General, the Department of Public Safety, the Department of the Prosecuting Attorney for the City and County of Honolulu, and the Honolulu Police Department. The Office of the Public Defender and the Japanese American Citizens League of Hawaii submitted testimony in opposition to the measure.

Your Committee finds that the Hawaii constitution affords greater protection for privacy than the federal constitution. Your Committee further finds that the federal case law acknowledges the long-standing common law principle of "knock and announce." For example, the United States Supreme Court decision in Wilson v. Arkansas, 541 U.S. 927 (1995), explained that the common law "knock and announce" principle was woven into the fabric of early American law. The court further stated that "Given the long-standing endorsement of the practice of announcement, we have little doubt that the Framers of the Fourth Amendment thought that the method of an officer's entry into a

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dwelling was among the factors to be considered in assessing the reasonableness of a search or seizure. Contrary to the decision below, we hold that in some circumstances, an officer's unannounced entry into a home might be unreasonable under the Fourth Amendment." Although the court went on to state that "reasonableness should not be read to mandate a rigid rule of announcement," the stronger protection of privacy under the Hawaii constitution should necessitate specific requirements in accordance with the amendments your Committee has made to this measure.

Your Committee also notes that the Ninth Circuit Court of Appeals decision in US v. Chavez-Miranda, 306 F.3d 973 (2002), is the basis for including an amendment requiring officers to wait a reasonable amount of time and what factors should be considered in determining reasonableness. However, this measure is not intended to prohibit knockless warrants in cases where there are safety issues and probable cause to enter the home.

Your Committee amended this measure to:

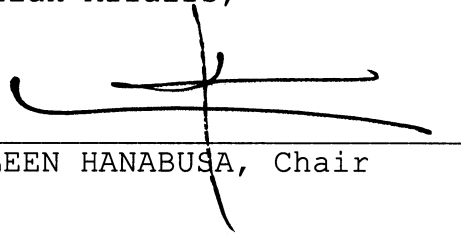
- (1) Require the law enforcement officer or person making the arrest to knock on the door and demand entrance by stating in a loud voice "Police. We have a warrant. Open the door." or, in the case in which arrest without a warrant is lawful, the person shall state in a loud voice "Police. Open the door.";
- (2) Add a provision that the officer or person shall wait a reasonable amount of time before inferring constructive refusal to enter;
- (3) Explain that in determining a reasonable amount of time, the following factors shall be considered:
 - (a) The size and layout of the residence;
 - (b) The time of day;
 - (c) The nature of the suspected offense;
 - (d) The evidence demonstrating guilt;
 - (e) The officer's other observations that would support a forced entry; and



- (f) Any exigent circumstances;
- (4) Delete the provision allowing a law enforcement officer or person making an arrest to substantially comply with the requirements of the statutes; and
- (5) Change the effective date from July 1, 2069 to July 1, 2006.

As affirmed by the record of votes of the members of your Committee on Judiciary and Hawaiian Affairs that is attached to this report, your Committee is in accord with the intent and purpose of H.B. No. 2299, H.D. 1, as amended herein, and recommends that it pass Second Reading in the form attached hereto as H.B. No. 2299, H.D. 1, S.D. 1, and be placed on the calendar for Third Reading.

Respectfully submitted on
behalf of the members of the
Committee on Judiciary and
Hawaiian Affairs,



COLLEEN HANABUSA, Chair



