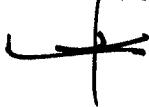


The Senate
State of Hawaii

STATE CAPITOL
HONOLULU, HAWAII 96813
February 16, 2006

TO: Members of the Senate Committee on Judiciary and Hawaiian Affairs
FROM: Sen. Colleen Hanabusa, Chair 
SUBJECT: Chair's inclinations for decision making on Friday, February 17, 9:00 a.m.

The following measures were previously heard on Monday, February 6 and deferred from Wednesday, February 8 and Friday, February 10:

Bill NO.	Description	Referral
SB 2600	RELATING TO ELECTRONIC COURT RECORDS, DOCUMENTS, PROCESSES, AND CERTIFICATES. Clarifies that court process records or documents may be created, retained and stored electronically and converted to electronic form; clarifies the requirements for court seals; and allows court documents and records to be electronically signed and sealed. Chair's inclination: SD1 – Incorporate the amendment proposed by the Attorney General to change the title to HRS § 606-3 to clarify the connection between the subject of the bill with the bill's title. The Attorney General's recommendation is in response to the concern that Section 2, as originally drafted, might be vulnerable to challenge because it describes what a "seal" is, and does not suggest a logical connection that is germane to the subject of the bill (electronic court records).	JHW
SB 2603	RELATING TO MOTOR VEHICLE INSURANCE. Provides district court judges with discretion to impose a term of imprisonment for first offenses of motor vehicle insurance laws. Chair's inclination: Defer to Wednesday, February 22, 2006 at 9:00 am in CR 229.	JHW

The following measures were previously heard on Tuesday, February 7 and deferred from Friday, February 10:

Bill NO.	Description	Referral
SB 2244	RELATING TO EXPUNGEMENTS. Requires the deletion of digitized arrest records, rather than the return of hard copy materials, if applicable. Clarifies the definition of "crime" as it relates to expungeable offenses. Limits expungements to applicants that have no convictions on their criminal record. Chair's inclination: SD1 -- Amend the bill to keep only the portions requiring the deletion of digitized arrest records, rather than the return of hard copy materials, if applicable and make other technical, non-substantive amendments. All other provisions were deleted in response to testimony received objecting to the inclusion of a violation in the definition of "crime" and concerns that an unrelated prior conviction would prevent an expungement.	JHW

- SB 2251 RELATING TO TORT ACTIONS. JHW
 Reiterates the underlying intent of the discretionary function and the intentional tort exception to the State's waiver of sovereign immunity for the torts of its employees, and declares that all the exceptions to the State's waiver of sovereign immunity are to be broadly construed in the State's favor.
Chair's inclination: Hold. The proposed language to broadly construe the discretionary function exception to the State's waiver of sovereign immunity raises serious implications requiring further review. The Chair recommends the establishment of a task force to review the issues proposed in this bill, which can be accomplished by resolution.
- SB 2259 RELATING TO INFORMATION CHARGING. JHW
 Add "unlawful methamphetamine trafficking" to those felonies that may be initiated by information charging.
Chair's inclination: SD1 – Incorporate the amendment proposed by the Attorney General to include "unlawful methamphetamine trafficking" in the list of class B felonies in section 806-83 and make a technical, non-substantive amendment.
- SB 2260 RELATING TO SENTENCING. JHW
 Provides for a mandatory sentence of 30 years to life for habitual violent felons. Adds 21 serious class C felonies to those offenses subject to repeat offender sentencing. Provides higher maximum terms for repeat offenders and lower penalties for most misdemeanor and petty misdemeanor offenses. Amends repeat offender statute to: (a) change the method of calculating the period of eligibility for repeat offender sentencing by adding the time a defendant spends on probation, parole, or in prison to the otherwise applicable period; (b) enhance certain sentencing provisions. Adds 20 class B and class C felonies to the list of offenses for which a deferred acceptance of plea (DAG or DANC) is not permitted.
Chair's inclination: SD1 – Amend the bill to keep only the portion providing for a mandatory sentence of 30 years to life for habitual violent felons, insert a savings clause, and make other technical, non-substantive amendments. All other provisions were deleted because the significant changes proposed have serious implications requiring further review. The Chair recommends the establishment of a task force to review the issues proposed in this bill, which can be accomplished by resolution.
- SB 2265 RELATING TO CRIMES AGAINST MINORS. JHW
 Add electronic enticement of a child to the list of class C felonies subject to repeat offender sentencing. Mandates at least 1 year incarceration for defendants convicted of promoting child abuse or convicted of electronic enticement of a child. Eliminates the possibility of a deferred plea for those who enter a plea to the crime of promoting child abuse or the crime of electronic enticement of a child. Adds a new misdemeanor of electronic enticement of a child in the third degree.
Chair's inclination: SD1 – Technical, non-substantive amendments.

The following measures were previously heard on Monday, February 13:

Bill NO.	Description	Referral
SB 2246	<p>PROPOSING AN AMENDMENT TO ARTICLE I OF THE CONSTITUTION OF THE STATE OF HAWAII RELATING TO SEXUAL ASSAULT.</p> <p>Propose an amendment to article I of the State Constitution to provide that the Legislature may define what behavior constitutes a continuing course of conduct in sexual assault crimes, and that the Legislature may define what constitutes the unanimity that is required for a conviction in sexual assault crimes. (Rabago case).</p> <p>Chair's inclination: SD1 -- Technical, non-substantive amendments.</p>	JHW
SB 2558	<p>RELATING TO THE HAWAII RULES OF EVIDENCE.</p> <p>Makes oral or written apologies inadmissible to prove fault and preserves admissibility of a statement of fault.</p> <p>Chair's inclination: Defer to Wednesday, February 22, 2006 at 9:00 am in CR 229 to provide additional time because the Hawaii Supreme Court Standing Committee on the Rules of Evidence has not reviewed this particular bill and the Committee has a meeting scheduled for Friday, February 17, 2006. •</p>	JHW
SB 2582	<p>RELATING TO THE HAWAII RULES OF EVIDENCE.</p> <p>Amends rule of evidence on erroneous ruling so that a party does not need to renew an objection or offer of proof once a court makes a definitive ruling on the record admitting or excluding evidence.</p> <p>Chair's inclination: Pass As Is</p>	JHW
SB 2941	<p>RELATING TO BRUSH FIRES.</p> <p>Creates a class C felony criminal property damage offense for setting brush fires. Permits court to assess defendant for cost of fighting fire. Makes parent or guardian liable for the cost of damage done by fire set by minor and for cost of fighting it.</p> <p>Chair's inclination: SD1 – Amend the bill to: 1) Address the concern raised by the Public Defender that some degree of property damage be shown by requiring that the fire result in damage to 10,000 or more square feet of property; 2) Incorporate the amendments proposed by DLNR to include federal fire fighting agencies in the exceptions to this new offense and include the department of health and county fire departments as entities to authorize prescribed or controlled burns; 3) Incorporate the proposal from the Nature Conservancy that a community service component be included in the bill for anyone convicted of this new offense; 4) Ensure that the parents or legal guardians of a minor assume monetary liability for only that portion of damage caused by the minor; and 5) add a section that this new offense does not prohibit a separate criminal or civil action by the State or a third party.</p>	JHW

The following measures were previously heard on Tuesday, February 14:

Bill NO.	Description	Referral
SB 1312	<p>RELATING TO ALTERNATIVE PROGRAMS TO INCARCERATION.</p> <p>Permits the court to impose alternative programs to incarceration.</p> <p>Chair's inclination: Hold</p>	JHW

SB 2148	<p>PROPOSING AMENDMENTS TO THE HAWAII CONSTITUTION RELATING TO THE ATTORNEY GENERAL.</p> <p>Proposes a new section to article V of the Hawaii constitution to provide for the election of the attorney general; amends article III, section 19 of the Hawaii constitution to allow for impeachment of the attorney general; makes confirming amendment to article V, section 6 of the Hawaii Constitution relating to removal of attorney general with the advice and consent of the senate.</p> <p>Chair's inclination: SD1 – Technical, non-substantive amendments.</p>	JHW
SB 2931	<p>RELATING TO LAW ENFORCEMENT.</p> <p>Transfers the law enforcement and security functions of the department of public safety to the department of attorney general subject to the approval of a constitutional amendment to elect the attorney general.</p> <p>Chair's inclination: SD1 – Incorporate the amendments proposed by the Attorney General to delay the effective date to twelve months after the chief election officer issues a certificate of results that the State Constitution has been amended to require the election of the attorney general and make other technical amendments.</p>	JHW
SB 2936	<p>RELATING TO CRIMINAL PROCEDURE.</p> <p>Requires that cases in which a person has been charged with a criminal offense be expeditiously adjudicated.</p> <p>Chair's inclination: Hold</p>	JHW
SB 2946	<p>RELATING TO THE CORRECTIONS POPULATION MANAGEMENT COMMISSION.</p> <p>Specifies the commission's recommendation-making responsibility.</p> <p>Chair's inclination: SD1 – Incorporate the amendment proposed by a faculty member in the Criminology & Criminal Justice Department at Chaminade University to require that research activities conducted through the commission be performed or overseen by or in consultation with a neutral party.</p>	JHW