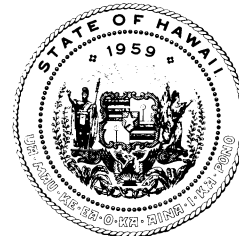


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PAUL WHALEN
MINORITY POLICY LEADER

The Senate
The Twenty-Second Legislature
of the
State of Hawaii

STATE CAPITOL
HONOLULU, HAWAII 96813



April 21, 2006

TO: Members of the Senate Committee on Judiciary and Hawaiian Affairs

FR: Senator Colleen Hanabusa, Chair
Senate Committee on Judiciary and Hawaiian Affairs

RE: House Bills that passed out of JHW in which the House agreed to the amendments made by the Senate and Measures that passed out of JHW and moved out of conference with amendments

The following House bills passed out of JHW as lead Committee and the House voted to agree to the amendments made by the Senate:

HB 877, HD2, SD1 **RELATING TO CRIME**
Separates the multiple offenses of varying severity currently found in section 134-6, HRS, relating to firearms and ammunition into separate sections to assist in accurate record keeping and setting of bail. Adds related class B and C felonies to the list of offenses for which criminal charges may be instituted by written information.

The Senate amended this bill by making technical, nonsubstantive changes for clarity and style.

HB 1233, HD1, SD1 **RELATING TO CIVIL RIGHTS**
Prohibits discrimination in public accommodations on the basis of sexual orientation.

The Senate amended this bill by: (1) Inserting a purpose section to clarify that this bill would make state civil rights laws uniform by prohibiting discriminatory practices in public accommodations on the basis of sexual orientation and to further clarify that discrimination based on gender identity or expression is prohibited sex discrimination; (2) Adding a definition for gender identity or expression; and (3) Providing that discriminatory practices in public accommodations on the basis of gender identity or expression is prohibited sex discrimination.

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LORRAINE R. INOUE
SECOND DISTRICT
RUSSELL S. KOKUBUN
THIRD DISTRICT
PAUL WHALEN
FOURTH DISTRICT
SHAN S. TSUTSUI
FIFTH DISTRICT
ROSALYN H. BAKER
SIXTH DISTRICT
J. KALANI ENGLISH
SEVENTH DISTRICT
GARY L. HOOSER
EIGHTH DISTRICT
SAM SLOM
NINTH DISTRICT
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TENTH DISTRICT
BRIAN T. TANIGUCHI
ELEVENTH DISTRICT
CAROL FUKUNAGA
TWELFTH DISTRICT
GORDON TRIMBLE
THIRTEENTH DISTRICT
SUZANNE CHUN OAKLAND
FOURTEENTH DISTRICT
DONNA MERCADO KIM
FIFTEENTH DISTRICT
NORMAN SAKAMOTO
SIXTEENTH DISTRICT
DAVID Y. IGE
SEVENTEENTH DISTRICT
RON MENOR
EIGHTEENTH DISTRICT
CAL KAWAMOTO
NINETEENTH DISTRICT
BRIAN KANNO
TWENTIETH DISTRICT
WILLIE C. ESPERO
TWENTY-FIRST DISTRICT
COLLEEN HANABUSA
TWENTY-SECOND DISTRICT
ROBERT BUNDA
TWENTY-THIRD DISTRICT
MELODIE WILLIAMS ADUJA
TWENTY-FOURTH DISTRICT
BOB HOGUE
TWENTY-FIFTH DISTRICT
FRED HEMMINGS
CHIEF CLERK
PAUL T. KAWAGUCHI

HB 1983, HD1, SD1 RELATING TO THE JUDICIARY
Authorizes the chief justice to suspend court deadlines during a period of civil defense emergency.

The Senate amended this bill by changing the effective date from January 1, 2020, to July 1, 2006.

HB 1984, HD1, SD1 RELATING TO CONVICTION DATA
Requires a review committee of the judicial council to investigate the current status of internet access to criminal conviction data.

The Senate amended this bill by: (1) Deleting the reference to the privacy interests of offenders in accordance with testimony from the Department of the Attorney General that privacy does not extend to criminal conviction data; and (2) Clarifying that the investigation of the review committee shall not include a review of the sex offender registry pursuant to chapter 846E, Hawaii Revised Statutes.

HB 2207, HD1, SD1 RELATING TO SEXUAL ASSAULT
Amends the law defining continuous sexual assault of a minor to permit the jury to convict if it is unanimous in finding that defendant committed at least three prohibited acts, even if it can not unanimously agree which 3 acts constitute the offense.

The Senate amended this bill by making technical, nonsubstantive changes for clarity and style.

HB 2780, HD1, SD1 RELATING TO THE DISPOSITION OF CONVICTED DEFENDANTS
Allows a person sentenced prior to 7/01/04, pursuant to HRS §706-622.5, for a first-time drug offense, who has completed a drug treatment and complied with terms set by the court, to apply for expungement of the record of conviction.

The Senate amended this bill by making technical, nonsubstantive changes for clarity and style.

HB 2898, SD1

RELATING TO ARBITRATION

Allows the district courts to have jurisdiction over cases subject to arbitration agreements where the disputed amount is \$10,000 or less.

The Senate amended this bill to specify that for cases involving arbitration subject to chapters 89 and 377, Hawaii Revised Statutes, or the National Labor Relations Act, "court" means the circuit court of the appropriate judicial circuit.

HB 3016, HD1,
SD1

RELATING TO UNSERVED ARREST WARRANTS

Requires courts to use due diligence in serving all traffic warrants issues against a defendant. Requires Hawaii paroling authority to report to the court whether a parolee has any outstanding traffic warrants. Provides that the Judicial Council shall conduct a review of the backlog of arrest warrants.

The Senate amended this bill by: (1) Deleting the amnesty program for traffic offenses committed by a person who has been sentenced to prison for a felony; (2) Adding a new section to chapter 604 stating that in any criminal proceeding, the court shall use due diligence in serving any outstanding traffic warrants on the defendant; (3) Adding a new section to chapter 353 to require the Hawaii paroling authority, in the event of suspension or revocation of parole, to inform the court of all outstanding traffic warrants issued against the parolee so that warrants may be served on the parolee in a timely manner; and (4) Combining the two sections requiring the judicial council, through a review committee, to conduct a comprehensive review of the backlog of arrest warrants waiting to be served upon persons incarcerated in the State's correctional facilities, and the entire backlog of unserved arrest warrants, and recommend to the legislature action necessary so these warrants will be served without further delay.

HB 3242, SD1

RELATING TO INTOXICATING LIQUOR

Prohibits consumption of liquor by minors.

The Senate amended this bill by adding "consumption" to "possession or custody" as a conforming amendment to accommodate consumption of alcohol as a part of a minor's authorized participation in religious ceremonies.

HB 3253, SD1 RELATING TO THE HAWAII RULES OF EVIDENCE

Provides that an issue regarding admission or exclusion of evidence is preserved for appeal once the court makes a definitive ruling on the issue and that a litigant need not renew objection or make offer of proof thereafter to preserve the issue for appeal.

The Senate amended this bill by inserting a savings clause and making technical, nonsubstantive changes for clarity and style.

The following House bills passed out of JHW as second Committee and the House voted to agree to the amendments made by the Senate:

HB 1, HD2, SD1 RELATING TO HIGHER EDUCATION

Recodifies the statutes relating to higher education and the University of Hawaii.

The Senate amended this bill by: (1) Incorporating the acts that were passed during the 2005 session, in particular, by including the amendments made to the current chapter on university projects, by placing the new section on the procurement institute after the current section on the law school, and by placing the new chapter on the nursing scholars program as a subpart in the part of the recodified chapter relating to administratively attached entities; (2) Adding cross referencing language for both the university revenue-undertakings fund and the subpart on university projects, since they are now separated from each other in the recodified chapter; (3) Changing the effective date of the measure from July 1, 2005 to July 1, 2006, and making corresponding changes elsewhere in part IV of the bill to related dates and events; and (4) Making technical nonsubstantive amendments for the purposes of clarity and style.

HB 1833, HD1, SD2 RELATING TO FIREWORKS

Broadens the authority of a county to issue fireworks permits by an authorized designee of the county.

The Senate amended this bill by first limiting its application to counties with a population of less than 500,000 and changing the effective date to upon approval. However, this limitation was later removed based on the testimony of the State Fire Council.

HB 1899, HD1, SD1 RELATING TO THE USE OF SAFETY HELMETS BY MINORS

Mandates safety helmet use for moped drivers under the age of 18 years.

The Senate amended this bill by (1) Adding "roadway" to highway and street; and (2) Changing the effective date to upon approval.

HB 1947, SD1 RELATING TO LIABILITY

Clarifies that any decision of the State, the department of transportation, the counties, or any officer, employee, or agent thereof, to select or apply flexible highway design shall not give rise to a cause of action or claim against them. Amends section 3 of Act 185, Session Laws of Hawaii 2005, to extend the deadline for the director of transportation to establish guidelines.

The Senate amended this bill by inserting a section extending the deadline provided in section 3 of Act 185 from June 30, 2006, to December 31, 2006, for the Director of Transportation to establish flexible highway design guidelines and changing the effective date from July 1, 2006, to June 1, 2006 to ensure that the deadline, which is set for June 30, 2006, is extended without lapsing.

HB 2050, HD2, SD1 RELATING TO INTERNATIONAL MATCHMAKING

Adds abuse orders of protection issued against a Hawaii resident as information that must be disclosed by a Hawaii resident as part of the resident's marital history information in dealings with international matchmaking organizations.

The Senate amended this bill by (1) Adding language to subsection 489N-2(b)(2) to clarify that the information provided shall include information regarding the number of domestic abuse orders of protection issued against the Hawaii resident in this State, as well as the number issued in any other state or country; and (2) Making the measure effective upon approval.

HB 2192, HD2, SD2 RELATING TO CONTROLLED SUBSTANCES

Clarifies requirements for emergency call-in Schedule II prescriptions, the use of facsimile and telephonic prescriptions, and the use of narcotics to

treat addiction. Allows the use of central fill pharmacies and limited information sharing. Adds new definitions.

The Senate amended this bill by: (1) Deleting the separate definitions of "long-term" and "short-term" and including them under one definition of types of detoxification treatment; (2) Deleting "drug" from the definition of "prescribe"; (3) Conforming the bill with existing language in federal law; (4) Replacing the defective effective date to become "effective upon its approval"; and (5) Making technical, nonsubstantive amendments for the purposes of clarity and style.

HB 2454, HD1,
SD2

RELATING TO LEGISLATIVE VACANCIES

Requires the Governor, in filling vacancies in the Senate, House of Representatives, and U.S. Senate, to select from a list of three prospective appointees nominated by the political party of the prior incumbent. Requires prospective appointees to be registered members of nominating political parties for at least six months prior to the appointment.

The Senate amended this bill by reducing the number of submitted candidates from five to three, and inserting thirty days after the date the vacancy occurs as the deadline for political parties to submit their candidates to the Governor.

HB 2535, SD2

RELATING TO OFFENSES AGAINST PROPERTY RIGHTS

Amends offense of use of a computer in the commission of a separate crime by including use of a computer to obtain control over the property of the victim or to facilitate commission of the offense of theft in the first or second degrees.

The Senate amended this bill by clarifying that the mental state of "intentional" use of a computer to obtain control over the property of a victim only applies to the offense of theft in the first or second degree and making technical, nonsubstantive stylistic changes.

HB 2737, HD1,
SD1

**RELATING TO THE HONOPOU DISTRICT OF THE
COUNTY OF MAUI**

Requires the attorney general to assist in resolving ownership issues relating to Honopou road, including Honopou bridge, of the Honopou district in Maui County; requires the department of transportation to determine the costs of strengthening Honopou bridge to allow firetrucks to safely cross and reach area residents.

The Senate amended this bill by changing the effective date to upon approval.

HB 2747, HD2,
SD1

RELATING TO DRIVER LICENSING

Allows the examiner of drivers to issue an instruction permit to an applicant with disabilities who possesses a valid driver's license from another state but who fails to pass a road test to obtain a license under this state.

The Senate amended this bill by making technical, nonsubstantive amendments and changing the effective date to upon approval.

HB 3018, HD1,
SD1

RELATING TO GOVERNMENT EMPLOYEES

Clarifies that employer contributions and EUTF assets are irrevocable and may be used only for the benefit of employee-beneficiaries and dependent-beneficiaries. Authorizes the board to use funds and create separate funds as a reserve against or to pay future costs of providing health and other benefits to retired employees and their beneficiaries.

The Senate amended this bill by deleting its contents and inserting provisions to: (1) Amend chapter 87A, HRS, to establish that the EUTF is administered as a trust as used in GASB statements 43 and 45; (2) Clarify that the State and county contributions to the EUTF are irrevocable; (3) Specify that EUTF moneys and assets shall only be used for the exclusive benefit of the employee-beneficiaries and dependent beneficiaries; (4) Authorize the EUTF board to use funds for the future provision of health and other benefits plans for retirees and their beneficiaries; (5) Allow the EUTF board to create separate funds for the future provision of health and other benefits plans for retirees and their

beneficiaries, subject to chapter 87A; and (6) Make the Act effective on July 1, 2006.

HB 3037, HD1,
SD1 RELATING TO DRIVER LICENSING
Provides that information be made available to a driver's license examiner which pertains to persons under the age of eighteen who have pending violations or proceedings that could result in the suspension or revocation of a driver's license or any pending adjudication for offenses relating to the operation of a motor vehicle.

The Senate amended this bill by changing the effective date to July 1, 2007, to give the Judiciary adequate time to coordinate the details of transfer of information and make computer interface modifications.

HB 3257, HD1,
SD2 RELATING TO USE OF INTOXICANTS
Requires police to inform a person arrested for driving under the influence of intoxicants of the sanctions for refusal to submit to breath, blood, or urine test only if person withdraws consent to testing implied by operation of a vehicle on public highway or waters of the State.

The Senate amended this bill by: (1) Making clarifying amendments on the recommendation of the Honolulu Prosecuting Attorney; (2) Changing the effective date to January 1, 2007; and (3) Correcting a Ramseyer error.

The following measures passed out of JHW as lead Committee and moved out of conference with amendments:

HB 1917, HD2,
SD2, CD1 PROPOSING AMENDMENTS TO THE HAWAII
CONSTITUTION RELATING TO THE
ESTABLISHMENT OF A SALARY COMMISSION
Proposes a constitutional amendment to establish a salary commission to review and make recommendations for the salaries of justices, judges, state legislators, the governor, the lieutenant governor, administrative director, and state department heads or executive officers of the executive departments, and the deputies or

assistants to the department heads, excluding the University of Hawaii and the Department of Education.

The Committee on Conference amended this bill by: (1) Requiring the salary commission to submit its recommendation beginning with the Regular Session of the 2007 Legislature; (2) Specifying that any change in salary which becomes effective shall not apply to the Legislature to which the recommendation for the change in salary was submitted; and 3) Making technical, nonsubstantive amendments for clarity, consistency, and style.

HB 2282, HD1,
SD1, CD1

RELATING TO CHAPTER 846E

Amends the definition of "repeat covered offender," to expressly except conviction of multiple counts within a single charging document. Adds conviction for a covered offense, unless incarcerated, and released on probation as events requiring a covered offender to register with the attorney general. Clarifies that the attorney general must represent the State in any civil proceeding to terminate public access.

The Committee on Conference amended this bill by making technical, nonsubstantive changes for clarity and style.

HB 2897, HD1,
SD1, CD1

RELATING TO APPELLATE JURISDICTION

Changes sunrise date of Act 202, Session Laws of Hawaii 2004, relating to appellate jurisdiction, which makes numerous changes concerning appellate courts, from 7/1/06 to 1/1/07.

The Committee on Conference amended this bill by keeping the sunrise date of July 1, 2006 and adding a repeal date of June 30, 2010. The bill further requires the Judiciary to submit a report to the legislature that shall include a detailed assessment of Act 202, Session Laws of Hawaii 2004, no later than twenty days prior to the convening of the regular session of 2010.

HB 2899, HD1,
SD1, CD1

RELATING TO JUDGMENT LIENS

Changes requirement for the debtor's social security number to just the last four digits when recording a judgment, order, or decree for lien purposes.

Clarifies that liens do not continue beyond the time period that the judgment, including its underlying order or decree, is in force. Clarifies that liens apply to judgments, including their underlying orders and decrees.

The Committee on Conference amended this bill by returning to the House draft, incorporating the recommendation of the Department of Taxation to eliminate the general excise tax number and replace this number with a generic identification number called the Hawaii Tax Identification Number, and making technical, nonsubstantive changes for clarity and style.

SB 695, HD1,
CD1

RELATING TO THE NATIONAL CRIME PREVENTION AND PRIVACY COMPACT
Facilitates the interstate exchange of criminal history information for noncriminal justice purposes, including but not limited to, background checks for the licensing and screening of employees and volunteers.

The Committee on Conference amended this bill by incorporating changes recommended by the Attorney General to ensure conformity with the federal law.

SB 995, SD1,
HD1, CD1

PROPOSING AN AMENDMENT TO ARTICLE VI, SECTION 3, OF THE HAWAII CONSTITUTION TO REMOVE THE MANDATORY RETIREMENT AGE FOR STATE JUSTICES AND JUDGES
Proposes a constitutional amendment to repeal the mandatory retirement age of 70 for state justices and judges.

The Committee on Conference amended this bill by making it effective upon compliance with article XVII, section 3, of Constitution of the State of Hawaii.

SB 2246, SD1,
HD2, CD1

PROPOSING AN AMENDMENT TO ARTICLE I OF THE CONSTITUTION OF THE STATE OF HAWAII RELATING TO SEXUAL ASSAULT.
Proposes 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 against minors younger than fourteen years of age, and that the Legislature may define what constitutes the unanimity that is required for a conviction in sexual assault crimes. (Rabago case).

The Committee on Conference amended this measure by making it effective upon compliance with article XVII, section 3, of Constitution of the State of Hawaii.

SB 2265, SD1,
HD1, CD1

RELATING TO CRIMES AGAINST MINORS
Adds 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 electronic enticement of a child. Eliminates the possibility of a deferred plea for those who enter a plea to the crime of electronic enticement of a child.

The Committee on Conference amended this bill to: (1) Restore the prohibition of deferred acceptance of guilty or nolo contendere pleas for individuals convicted of promoting child abuse in the second or third degree, as provided in the Senate version; and (2) Change the effective date from January 1, 2096 to upon approval.

SB 2609, SD1,
HD1, CD1

RELATING TO WRIT OF CERTIORARI
Clarifies the required grounds for an application for a writ of certiorari and the requirements for timely filing.

The Committee on Conference amended this bill to insert the Senate version, which clarifies that the requirement of stating the magnitude of the error applies to both of the additional grounds, not just the second one.

SB 2924, SD1,
HD1, CD1

RELATING TO CRUELTY TO ANIMALS
Gives law enforcement officers authority to enter premises and impound a pet animal when there is probable cause to believe the pet animal is being subjected to cruel treatment. Allows a court to order the forfeiture of an impounded pet animal prior to and during a criminal action against its owner.

The Committee on Conference amended this bill to make technical, nonsubstantive changes.

SB 2930, SD1, HD1, CD1 RELATING TO CRUELTY TO ANIMALS
Clarifies that animal care costs incurred for abused or neglected animals will be the responsibility of the abuser.

The Committee on Conference amended this bill to require, rather than authorize, the court to order the defendant to reimburse the caregiver for the care of the animals, as provided in the Senate's version of the measure. The Committee on Conference has also limited the reimbursement to reasonable costs incurred.

The following measures passed out of JHW as second Committee and moved out of conference with amendments. Since JHW is the second Committee, the bills are listed below, but an explanation of the changes should be requested from the lead Committee.

HB 862, HD2, SD2, CD1 RELATING TO TRAFFIC OFFENSES

HB 1955, HD1, SD1, CD1 RELATING TO LITTER CONTROL

HB 2343, HD1, SD2, CD1 RELATING TO THE PENAL CODE

HB 2422, HD1, SD2, CD1 RELATING TO HIGHWAY SAFETY

HB 2639, HD2, SD2, CD1 RELATING TO USE OF INTOXICANTS WHILE OPERATING A MOTOR VEHICLE

SB 427, SD1, HD1, CD1 RELATING TO CHILD PASSENGER SAFETY

SB 706, SD2, HD2, CD1 RELATING TO INTOXICATING LIQUOR VIOLATIONS INVOLVING MINORS

SB 826, HD2, CD1 RELATING TO CHILD ABUSE

SB 2213, SD2,
HD2, CD1

RELATING TO TORT ACTIONS

SB 2328, SD2,
HD2, CD1

RELATING TO NOTICE TO FOSTER PARENTS
FOR CHAPTER 587, HAWAII REVISED
STATUTES, CHILD PROTECTIVE ACT HEARINGS

SB 2479, HD1,
CD1

PROPOSING AN AMENDMENT TO ARTICLE VII,
SECTION 12, OF THE HAWAII STATE
CONSTITUTION

Proposes a constitutional amendment to authorize
the State to issue SPRBs and use the proceeds
from the bonds to assist agricultural enterprises
serving important agricultural lands.

The Committee on Conference amended this bill by specifically only
allowing agricultural enterprises serving important agricultural lands.

SB 3254, SD2,
HD2, CD1

RELATING TO HOME AND COMMUNITY-BASED
SERVICES

SB 3262, SD1,
HD1, CD1

RELATING TO HEALTH

Thank you for your attention to this matter. Please feel free to
contact me if you have any questions or concerns.