

S.B. NO. 1327

JAN 22 2007

A BILL FOR AN ACT

RELATING TO INFORMATION CHARGING.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF HAWAII:

1 SECTION 1. Section 806-83, Hawaii Revised Statutes, is
2 amended by amending subsection (a), as effective until June 30,
3 2008, to read as follows:

4 "(a) Criminal charges may be instituted by written
5 information for a felony when the charge is a class C felony
6 under section 19-3.5 (voter fraud); section 128D-10 (knowing
7 releases); section 132D-14(a)(1), (2)(a), and (3)[7] (penalties
8 for failure to comply with requirements of sections 132D-7,
9 132D-10, and 132D-16); section 134-24 (place to keep unloaded
10 firearms other than pistols and revolvers); section 134-7(a)
11 and (b) (ownership or possession prohibited); section 134-8
12 (prohibited ownership); section 134-9 (licenses to carry);
13 section 134-17(a) (relating to false information or evidence
14 concerning psychiatric or criminal history); section 134-51
15 (deadly weapons); section 134-52 (switchblade knives); section
16 134-53 (butterfly knives); section 188-23 (possession or use of
17 explosives, electrofishing devices, and poisonous substances in

1 state waters prohibited); section 231-34 (attempt to evade or
2 defeat tax); section 231-36 (false and fraudulent statements);
3 section 245-37 (sale or purchase of packages of cigarettes
4 without stamps); section 245-38 (vending unstamped cigarettes);
5 section 245-51 (sale of export cigarettes prohibited); section
6 245-52 (alteration of packaging prohibited); section 291C-12.5
7 (accidents involving substantial bodily injury); section 291E-
8 61.5 (habitually operating a vehicle under the influence of an
9 intoxicant); section 329-41 (prohibited acts B); section 329-42
10 (prohibited acts C); section 329-43.5 (prohibited acts related
11 to drug paraphernalia); section 329C-2 (manufacture,
12 distribution, or possession with intent to distribute an
13 imitation controlled substance to a person under eighteen years
14 of age); section 346-34(d)(2) and (e) (fraud involving food
15 stamps or coupons with a value exceeding \$300); section 346-43.5
16 (medical assistance fraud); section 383-141 (falsely obtaining
17 benefits); section 431:10C-307.7 (insurance fraud); section
18 482D-7 (violation of fineness standards and stamping
19 requirements); section 485-8 (registration of securities);
20 section 485-14 (registration of dealers, investment advisers,
21 salespersons, and investment adviser representatives); section
22 485-25 (fraudulent and other prohibited practices); section 707-

1 703 (negligent homicide in the second degree); section 707-705
2 (negligent injury in the first degree); section 707-711 (assault
3 in the second degree); section 707-713 (reckless endangering in
4 the first degree); section 707-721 (unlawful imprisonment in the
5 first degree); section 707-726 (custodial interference in the
6 first degree); section 707-757 (electronic enticement of a child
7 in the second degree); section 707-766 (extortion in the second
8 degree); section 708-811 (burglary in the second degree);
9 section 708-821 (criminal property damage in the second degree);
10 section 708-831 (theft in the second degree); section 708-833.5
11 (shoplifting); section 708-835.5 (theft of livestock); section
12 708-836 (unauthorized control of propelled vehicle); section
13 708-836.5 (unauthorized entry into motor vehicle); section
14 708-839.5 (theft of utility services); section 708-839.8
15 (identity theft in the third degree); section 708-852 (forgery
16 in the second degree); section 708-854 (criminal possession of a
17 forgery device); section 708-858 (suppressing a testamentary or
18 recordable instrument); section 708-875 (trademark
19 counterfeiting); section 708-891.5 (computer fraud in the second
20 degree); section 708-892.5 (computer damage in the second
21 degree); section 708-895.6 (unauthorized computer access in the
22 second degree); section 708-8100 (fraudulent use of a credit

1 card); section 708-8102 (theft/forgery of credit cards); section
2 708-8103 (credit card fraud by a provider of goods or services);
3 section 708-8104 (possession of unauthorized credit card
4 machinery or incomplete cards); section 708-8200 (cable
5 television service fraud in the first degree); section 708-8202
6 (telecommunication service fraud in the first degree); section
7 709-903.5 (endangering the welfare of a minor in the first
8 degree); section 709-906 (abuse of family or household members);
9 section 710-1016.3 (obtaining a government-issued identification
10 document under false pretenses in the first degree); section
11 710-1016.6 (impersonating a law enforcement officer in the first
12 degree); section 710-1017.5 (sale or manufacture of deceptive
13 identification document); section 710-1018 (securing the
14 proceeds of an offense); section 710-1021 (escape in the second
15 degree); section 710-1023 (promoting prison contraband in the
16 second degree); section 710-1024 (bail jumping in the first
17 degree); section 710-1029 (hindering prosecution in the first
18 degree); section 710-1060 (perjury); section 710-1072.5
19 (obstruction of justice); section 711-1103 (riot); section
20 711-1109.3 (cruelty to animals/fighting dogs); section
21 711-1110.9 (violation of privacy in the first degree); section
22 711-1112 (interference with the operator of a public transit

1 vehicle); section 712-1221 (promoting gambling in the first
2 degree); section 712-1222.5 (promoting gambling aboard ships);
3 section 712-1224 (possession of gambling records in the first
4 degree); section 712-1243 (promoting a dangerous drug in the
5 third degree); section 712-1246 (promoting a harmful drug in the
6 third degree); section 712-1247 (promoting a detrimental drug in
7 the first degree); section 712-1249.6 (promoting a controlled
8 substance in, on, or near schools or school vehicles); section
9 803-42 (interception, access, and disclosure of wire, oral, or
10 electronic communications, use of pen register, trap and trace
11 device, and mobile tracking device prohibited); or section
12 [~~846E-9(b)~~] 846E-9 (failure to comply with covered offender
13 registration requirements)."

14 SECTION 2. Section 806-83, Hawaii Revised Statutes, is
15 amended by amending subsection (a), as effective on July 1,
16 2008, to read as follows:

17 "(a) Criminal charges may be instituted by written
18 information for a felony when the charge is a class C felony
19 under section 19-3.5 (voter fraud); section 128D-10 (knowing
20 releases); section 132D-14(a)(1), (2)(A), and (3) (penalties for
21 failure to comply with requirements of sections 132D-7, 132D-10,
22 and 132D-16); section 134-24 (place to keep unloaded firearms

1 other than pistols and revolvers); section 134-7(a) and (b)
2 (ownership or possession prohibited); section 134-8 (prohibited
3 ownership); section 134-9 (licenses to carry); section 134-17(a)
4 (relating to false information or evidence concerning
5 psychiatric or criminal history); section 134-51 (deadly
6 weapons); section 134-52 (switchblade knives); section 134-53
7 (butterfly knives); section 188-23 (possession or use of
8 explosives, electrofishing devices, and poisonous substances in
9 state waters prohibited); section 231-34 (attempt to evade or
10 defeat tax); section 231-36 (false and fraudulent statements);
11 section 245-37 (sale or purchase of packages of cigarettes
12 without stamps); section 245-38 (vending unstamped cigarettes);
13 section 245-51 (sale of export cigarettes prohibited); section
14 245-52 (alteration of packaging prohibited); section 291C-12.5
15 (accidents involving substantial bodily injury); section
16 291E-61.5 (habitually operating a vehicle under the influence of
17 an intoxicant); section 329-41 (prohibited acts B); section
18 329-42 (prohibited acts C); section 329-43.5 (prohibited acts
19 related to drug paraphernalia); section 329C-2 (manufacture,
20 distribution, or possession with intent to distribute an
21 imitation controlled substance to a person under eighteen years
22 of age); section 346-34(d)(2) and (e) (fraud involving food

1 stamps or coupons with a value exceeding \$300); section 346-43.5
2 (medical assistance fraud); section 383-141 (falsely obtaining
3 benefits); section 431:10C-307.7 (insurance fraud); section
4 482D-7 (violation of fineness standards and stamping
5 requirements); section 485A-301 (registration of securities);
6 section 485A-401 (registration of broker-dealers); section
7 485A-402 (registration of agents); section 485A-403
8 (registration of investment advisors); section 485A-404
9 (registration of investment advisor representatives); section
10 485A-405 (registration of federal covered investment advisors);
11 section 485A-501 (general fraud); section 485A-502 (prohibited
12 conduct in providing investment advice); section 707-703
13 (negligent homicide in the second degree); section 707-705
14 (negligent injury in the first degree); section 707-711 (assault
15 in the second degree); section 707-713 (reckless endangering in
16 the first degree); section 707-721 (unlawful imprisonment in the
17 first degree); section 707-726 (custodial interference in the
18 first degree); section 707-757 (electronic enticement of a child
19 in the second degree); section 707-766 (extortion in the second
20 degree); section 708-811 (burglary in the second degree);
21 section 708-821 (criminal property damage in the second degree);
22 section 708-831 (theft in the second degree); section 708-833.5

1 (shoplifting); section 708-835.5 (theft of livestock); section
2 708-836 (unauthorized control of propelled vehicle); section
3 708-836.5 (unauthorized entry into motor vehicle); section
4 708-839.5 (theft of utility services); section 708-839.8
5 (identity theft in the third degree); section 708-852 (forgery
6 in the second degree); section 708-854 (criminal possession of a
7 forgery device); section 708-858 (suppressing a testamentary or
8 recordable instrument); section 708-875 (trademark
9 counterfeiting); section 708-891.5 (computer fraud in the second
10 degree); section 708-892.5 (computer damage in the second
11 degree); section 708-895.6 (unauthorized computer access in the
12 second degree); section 708-8100 (fraudulent use of a credit
13 card); section 708-8102 (theft/forgery of credit cards); section
14 708-8103 (credit card fraud by a provider of goods or services);
15 section 708-8104 (possession of unauthorized credit card
16 machinery or incomplete cards); section 708-8200 (cable
17 television service fraud in the first degree); section 708-8202
18 (telecommunication service fraud in the first degree); section
19 709-903.5 (endangering the welfare of a minor in the first
20 degree); section 709-906 (abuse of family or household members);
21 section 710-1016.3 (obtaining a government-issued identification
22 document under false pretenses in the first degree); section

1 710-1016.6 (impersonating a law enforcement officer in the first
2 degree); section 710-1017.5 (sale or manufacture of deceptive
3 identification document); section 710-1018 (securing the
4 proceeds of an offense); section 710-1021 (escape in the second
5 degree); section 710-1023 (promoting prison contraband in the
6 second degree); section 710-1024 (bail jumping in the first
7 degree); section 710-1029 (hindering prosecution in the first
8 degree); section 710-1060 (perjury); section 710-1072.5
9 (obstruction of justice); section 711-1103 (riot); section
10 711-1109.3 (cruelty to animals/fighting dogs); section
11 711-1110.9 (violation of privacy in the first degree); section
12 711-1112 (interference with the operator of a public transit
13 vehicle); section 712-1221 (promoting gambling in the first
14 degree); section 712-1222.5 (promoting gambling aboard ships);
15 section 712-1224 (possession of gambling records in the first
16 degree); section 712-1243 (promoting a dangerous drug in the
17 third degree); section 712-1246 (promoting a harmful drug in the
18 third degree); section 712-1247 (promoting a detrimental drug in
19 the first degree); section 712-1249.6 (promoting a controlled
20 substance in, on, or near schools or school vehicles); section
21 803-42 (interception, access, and disclosure of wire, oral, or
22 electronic communications, use of pen register, trap and trace

1 device, and mobile tracking device prohibited); or section
2 [~~846E-9(b)~~] 846E-9 (failure to comply with covered offender
3 registration requirements)."

4 SECTION 3. Section 806-83, Hawaii Revised Statutes, is
5 amended by amending subsection (b) to read as follows:

6 "(b) Criminal charges may be instituted by written
7 information for a felony when the charge is a class B felony
8 under section 134-23 (place to keep loaded firearms other than
9 pistols and revolvers); section 134-25 (place to keep pistol or
10 revolver); section 134-26 (carrying or possessing a loaded
11 firearm on a public highway); section 134-7(b) (ownership or
12 possession prohibited); section 329-43.5 (prohibited acts
13 related to drug paraphernalia); section 708-810 (burglary in the
14 first degree); section 708-830 (theft in the first degree);
15 section 708-839.7 (identity theft in the second degree); section
16 708-851 (forgery in the first degree); section 708-891 (computer
17 fraud in the first degree); section 708-892 (computer damage in
18 the first degree); section 712-1240.8 (methamphetamine
19 trafficking in the second degree); section 712-1242 (promoting a
20 dangerous drug in the second degree); section 712-1245
21 (promoting a harmful drug in the second degree); or section 712-

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1 1249.5 (commercial promotion of marijuana in the second
2 degree)."

3 SECTION 4. Statutory material to be repealed is bracketed
4 and stricken. New statutory material is underscored.

5 SECTION 5. This Act shall take effect upon its approval,
6 except that section 2 shall take effect on July 1, 2008.

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INTRODUCED BY: _____
BY REQUEST

JUSTIFICATION SHEET

DEPARTMENT: Attorney General

TITLE: A BILL FOR AN ACT RELATING TO INFORMATION CHARGING.

PURPOSE: To add section 712-1240.8 (Methamphetamine trafficking in the second degree), Hawaii Revised Statutes, to those class B felonies that may be initiated by information charging and to amend the language of section 806-83, Hawaii Revised Statutes, to provide that all class C felony offenses for failure to comply with covered offender registration requirements may be initiated by information charging.

MEANS: Amend section 806-83(a), Hawaii Revised Statutes, and the version of section 806-83(a) as amended by section 16 of Act 229, Session Laws of Hawaii 2006, effective July 1, 2008.

JUSTIFICATION: Act 62, Session Laws of Hawaii 2004, authorized criminal charges to be initiated by information charging for certain enumerated class C and B felonies listed in section 806-83, including promoting a dangerous drug in the second degree, a class B felony. When Act 62 went into effect, promoting a dangerous drug in the second degree covered the offense of distributing any dangerous drug in any amount, including methamphetamine.

However, in 2004, the Legislature also enacted Act 44, which pinpointed the particular dangerous drug methamphetamine and set it apart as the new crime of unlawful methamphetamine trafficking. Accordingly, Act 44 also amended the offense of promoting a dangerous drug in the second degree so that it did not cover the distribution of methamphetamine because the

offense was specifically dealt with in a separate statutory section.

Clearly, the intent of the Legislature through Acts 62 and 44, SLH 2004 was to include class B felonies involving the distribution of any amount of a dangerous drug, including methamphetamine, as felonies that could be initiated by information charging. Unfortunately, the new methamphetamine offenses were inadvertently not added to section 806-83, the information charging law.

Inclusion of the class B felonies involving methamphetamine in section 806-83 would conform the law to the intent of Act 62 to enable class B felonies involving drugs, including methamphetamine, to be initiated by information charging.

Because there are numerous class B felony offenses charged under section 712-1240.8, the ability to use information charging for these class B felonies would save significant judicial, prosecutorial, and police resources.

Regarding section 846E-9, currently, the class C felony offense of failure to comply with covered offender requirements as specified in section 846E-9(a) may be initiated by information charging as this section is subsumed in 846E-9(b), the section referenced in section 806-83, the information charging statute. However, the class C felony offense of a second or subsequent failure to comply with covered offender registration requirements, or the class C felony offense of recklessly failing to comply cannot be initiated by information charging due to the particular reference to section 846E-9(b) in section 806-83. There is no policy reason for this distinction, and the amendment to section 806-83 will remedy this and allow for all class C felony offenses for failure to comply with covered

offender registration requirements to be initiated by information charging.

Impact on the public: Lay witnesses to all class C felonies charged under section 846E-9 and class B felonies under section 712-1240.8 would be required to testify less often.

Impact on the department and other agencies: Police witnesses to all class C felonies charged under section 846E-9 and class B felonies under section 712-1240.8 would be required to testify less often and the courts, the prosecutors, and the public defenders associated with these cases would save time and resources because the preliminary hearings and the grand jury hearings that would otherwise be required would no longer be required.

GENERAL FUND: None.

OTHER FUNDS: None.

PPBS PROGRAM DESIGNATION: None.

OTHER AFFECTED AGENCIES: Judiciary, county police, county prosecutors, and the Office of the Public Defender.

EFFECTIVE DATE: Upon approval.