

S.B. NO. 2963

JAN 22 2008

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**A BILL FOR AN ACT**

RELATING TO CRIME.

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

1           SECTION 1. Chapter 710, Hawaii Revised Statutes, is  
2 amended by adding to part II a new section to be appropriately  
3 designated and to read as follows:

4           "§710-       Obstruction of criminal investigations. (1) A  
5 person commits the offense of obstruction of criminal  
6 investigations if the person does the following:

- 7           (a) Uses force upon another person;  
8           (b) Makes threats directed at any other person; or  
9           (c) Confers, offers or agrees to confer, directly or  
10           indirectly, any pecuniary benefit upon another person;  
11 with intent to obstruct, prevent or delay the communication of  
12 information relating to a violation of any criminal statute of  
13 this State by any person to a law enforcement officer or  
14 prosecutor.

15           (2) "Threat" as used in this section means any threat  
16 proscribed by section 707-764(1).

1       (3) Obstruction of criminal investigations is a class C  
2 felony."

3       SECTION 2. Section 338-18, Hawaii Revised Statutes, is  
4 amended by amending subsection (b) to read as follows:

5       "(b) The department shall not permit inspection of public  
6 health statistics records, or issue a certified copy of any such  
7 record or part thereof, unless it is satisfied that the  
8 applicant has a direct and tangible interest in the record. The  
9 following persons shall be considered to have a direct and  
10 tangible interest in a public health statistics record:

- 11       (1) The registrant;
- 12       (2) The spouse of the registrant;
- 13       (3) A parent of the registrant;
- 14       (4) A descendant of the registrant;
- 15       (5) A person having a common ancestor with the registrant;
- 16       (6) A legal guardian of the registrant;
- 17       (7) A person or agency acting on behalf of the registrant;
- 18       (8) A personal representative of the registrant's estate;
- 19       (9) A person whose right to inspect or obtain a certified  
20 copy of the record is established by an order of a  
21 court of competent jurisdiction;

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- 1           (10) Adoptive parents who have filed a petition for  
2                    adoption and who need to determine the death of one or  
3                    more of the prospective adopted child's natural or  
4                    legal parents;
- 5           (11) A person who needs to determine the marital status of  
6                    a former spouse in order to determine the payment of  
7                    alimony;
- 8           (12) A person who needs to determine the death of a  
9                    nonrelated co-owner of property purchased under a  
10                  joint tenancy agreement; [~~and~~]
- 11          (13) A person who needs a death certificate for the  
12                  determination of payments under a credit insurance  
13                  policy[-]; and
- 14          (14) A law enforcement officer, as defined by section 710-  
15                  1000(13), who needs vital statistics records as  
16                  evidence in a criminal investigation, provided that  
17                  the law enforcement officer requests the vital  
18                  statistics records by providing identification and  
19                  submitting to the department a signed statement  
20                  verifying, under penalty of criminal prosecution for  
21                  false swearing in official matters, (A) that the  
22                  officer is a law enforcement officer as defined by

1           section 710-1000(13), (B) that the officer is acting  
2           in the officer's official capacity, and (C) that the  
3           vital statistics records are needed as evidence in a  
4           criminal investigation."

5           SECTION 3. Section 706-606.5, Hawaii Revised Statutes, is  
6 amended by amending subsection (1) to read as follows:

7           "(1) Notwithstanding section 706-669 and any other law to  
8 the contrary, any person convicted of murder in the second  
9 degree, any class A felony, any class B felony, or any of the  
10 following class C felonies: section 188-23 relating to  
11 possession or use of explosives, electrofishing devices, and  
12 poisonous substances in state waters; section 386-98(d)(1)  
13 relating to fraud violations and penalties; section 431:10A-  
14 131(b)(2) relating to insurance fraud; section 431:10C-  
15 307.7(b)(2) relating to insurance fraud; section 432:1-106(b)(2)  
16 relating to insurance fraud; section 432D-18.5(b)(2) relating to  
17 insurance fraud; section 707-703 relating to negligent homicide  
18 in the second degree; section 707-711 relating to assault in the  
19 second degree; section 707-713 relating to reckless endangering  
20 in the first degree; section 707-716 relating to terroristic  
21 threatening in the first degree; section 707-721 relating to  
22 unlawful imprisonment in the first degree; section 707-732

1 relating to sexual assault or rape in the third degree; section  
2 707-752 relating to promoting child abuse in the third degree;  
3 section 707-757 relating to electronic enticement of a child in  
4 the second degree; section 707-766 relating to extortion in the  
5 second degree; section 708-811 relating to burglary in the  
6 second degree; section 708-821 relating to criminal property  
7 damage in the second degree; section 708-831 relating to theft  
8 in the first degree as amended by Act 68, Session Laws of Hawaii  
9 1981; section 708-831 relating to theft in the second degree;  
10 section 708-835.5 relating to theft of livestock; section 708-  
11 836 relating to unauthorized control of propelled vehicle;  
12 section 708-839.8 relating to identity theft in the third  
13 degree; section 708-839.55 relating to unauthorized possession  
14 of confidential personal information; section 708-852 relating  
15 to forgery in the second degree; section 708-854 relating to  
16 criminal possession of a forgery device; section 708-875  
17 relating to trademark counterfeiting; [~~section 710-1071 relating~~  
18 ~~to intimidating a witness;~~] section 711-1103 relating to riot;  
19 section 712-1203 relating to promoting prostitution in the  
20 second degree; section 712-1221 relating to gambling in the  
21 first degree; section 712-1224 relating to possession of  
22 gambling records in the first degree; section 712-1243 relating

1 to promoting a dangerous drug in the third degree; section 712-  
2 1247 relating to promoting a detrimental drug in the first  
3 degree; section 134-7 relating to ownership or possession of  
4 firearms or ammunition by persons convicted of certain crimes;  
5 section 134-8 relating to ownership, etc., of prohibited  
6 weapons; section 134-9 relating to permits to carry, or who is  
7 convicted of attempting to commit murder in the second degree,  
8 any class A felony, any class B felony, or any of the class C  
9 felony offenses enumerated above and who has a prior conviction  
10 or prior convictions for the following felonies, including an  
11 attempt to commit the same: murder, murder in the first or  
12 second degree, a class A felony, a class B felony, any of the  
13 class C felony offenses enumerated above, or any felony  
14 conviction of another jurisdiction, shall be sentenced to a  
15 mandatory minimum period of imprisonment without possibility of  
16 parole during such period as follows:

17 (a) One prior felony conviction:

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

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

- 1 (iii) Where the instant conviction is for a class B  
2 felony--three years, four months;
- 3 (iv) Where the instant conviction is for a class C  
4 felony offense enumerated above--one year, eight  
5 months;
- 6 (b) Two prior felony convictions:
- 7 (i) Where the instant conviction is for murder in the  
8 second degree or attempted murder in the second  
9 degree--twenty years;
- 10 (ii) Where the instant conviction is for a class A  
11 felony--thirteen years, four months;
- 12 (iii) Where the instant conviction is for a class B  
13 felony--six years, eight months;
- 14 (iv) Where the instant conviction is for a class C  
15 felony offense enumerated above--three years,  
16 four months;
- 17 (c) Three or more prior felony convictions:
- 18 (i) Where the instant conviction is for murder in the  
19 second degree or attempted murder in the second  
20 degree--thirty years;
- 21 (ii) Where the instant conviction is for a class A  
22 felony--twenty years;

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

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

5 SECTION 4. Section 707-701.5, Hawaii Revised Statutes, is  
6 amended to read as follows:

7 "[+]§707-701.5[+] **Murder in the second degree.** (1)

8 Except as provided in section 707-701, a person commits the  
9 offense of murder in the second degree if the person

10 [~~intentionally~~]:

11 (a) Intentionally or knowingly causes the death of another  
12 person[~~-~~]; or

13 (b) With the intent to do serious bodily injury to any  
14 person, performs acts that cause the death of another  
15 person; or

16 (c) Intentionally or knowingly performs acts that create a  
17 strong probability of death to any person, and such  
18 acts cause the death of another person; or

19 (d) Intentionally or knowingly performs acts that create a  
20 strong probability of serious bodily injury to any  
21 person, and such acts cause the death of another  
22 person.



1           (2) Murder in the second degree is a felony for which the  
2 defendant shall be sentenced to imprisonment as provided in  
3 section 706-656."

4           SECTION 5. Section 710-1017, Hawaii Revised Statutes, is  
5 amended to read as follows:

6           "**§710-1017 Tampering with a government record.** (1) A  
7 person commits the offense of tampering with a government record  
8 if:

9           (a) The person knowingly and falsely makes, completes, or  
10 alters, or knowingly makes a false entry in, a written  
11 instrument which is or purports to be a government  
12 record or a true copy thereof; or

13           (b) The person knowingly presents or uses a written  
14 instrument which is or purports to be a government  
15 record or a true copy thereof, knowing that it has  
16 been falsely made, completed, or altered, or that a  
17 false entry has been made therein, with intent that it  
18 be taken as genuine; or

19           (c) The person knowingly records, registers, or files, or  
20 offers for recordation, registration, or filing, in a  
21 governmental office or agency, a written statement  
22 which has been falsely made, completed, or altered, or

1 in which a false entry has been made, or which  
2 contains a false statement or false information; or

3 (d) Knowing the person lacks the authority to do so:

4 (i) The person intentionally destroys, mutilates,  
5 conceals, removes, or otherwise impairs the  
6 availability of any government records; or

7 (ii) The person refuses to deliver up a government  
8 record in the person's possession upon proper  
9 request of a public servant entitled to receive  
10 such record for examination or other purposes.

11 (2) For the purpose of this section, "government record"  
12 includes all official books, papers, written instruments, or  
13 records created, issued, received, or kept by any governmental  
14 office or agency or required by law to be kept by others for the  
15 information of the government.

16 (3) [~~Tampering~~] Except as provided in subsection (4),  
17 tampering with a government [~~records~~] record is a misdemeanor.

18 (4) Any person who commits the offense of tampering with a  
19 government record with the intent to impede, obstruct, or  
20 mislead a public servant in the performance of any governmental  
21 function, including but not limited to any administrative or

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1 criminal investigation or related official proceeding, shall be  
2 guilty of a class C felony."

3 SECTION 6. Section 710-1060, Hawaii Revised Statutes, is  
4 amended by amending subsection (3) to read as follows:

5 "(3) Perjury is a class [E] B felony."

6 SECTION 7. Section 710-1061, Hawaii Revised Statutes, is  
7 amended by amending subsection (2) to read as follows:

8 "(2) False swearing in official matters is a  
9 [~~misdemeanor-~~] class C felony."

10 SECTION 8. Section 710-1062, Hawaii Revised Statutes, is  
11 amended by amending subsection (2) to read as follows:

12 "(2) False swearing is a [~~petty~~] misdemeanor."

13 SECTION 9. Section 710-1071, Hawaii Revised Statutes, is  
14 amended by amending subsection (3) to read as follows:

15 "(3) Intimidating a witness is a class [E] B felony."

16 SECTION 10. Section 710-1072, Hawaii Revised Statutes, is  
17 amended by amending subsection (2) to read as follows:

18 "(2) Tampering with a witness is a [~~misdemeanor-~~] class C  
19 felony."

20 SECTION 11. Section 710-1072.2, Hawaii Revised Statutes,  
21 is amended by amending subsection (3) to read as follows:

1           "(3) Retaliating against a witness is a class [E] B  
2 felony."

3           SECTION 12. Section 710-1075.5, Hawaii Revised Statutes,  
4 is amended to read as follows:

5           "~~[+]§710-1075.5[+]~~ **Retaliating against a juror.** (1) A  
6 person commits the offense of retaliating against a juror if the  
7 person uses force upon or threatens a juror or another person or  
8 damages the property of a juror or another person because of the  
9 vote, opinion, decision, or other action of the juror in an  
10 official proceeding.

11           (2) "Threaten" as used in this section means any threat  
12 proscribed in sections 707-764(1) and 707-764(2).

13           (3) Retaliating against a juror is a class [E] B felony."

14           SECTION 13. Section 710-1076, Hawaii Revised Statutes, is  
15 amended by amending subsection (3) to read as follows:

16           "(3) Tampering with physical evidence is a [~~misdemeanor.~~]  
17 class C felony."

18           SECTION 14. Section 802E-2, Hawaii Revised Statutes, is  
19 amended to read as follows:

20           "~~[+]§802E-2[+]~~ **Court advisement concerning alien status**  
21 **required.** [~~Prior to acceptance~~] Upon entry of a plea of guilty  
22 or nolo contendere to any offense punishable as a crime under

1 state law, except offenses designated as infractions under state  
2 law, the court shall [~~administer the following advisement on the~~  
3 ~~record to the defendant: If you are]~~ address the defendant  
4 personally in open court and determine that the defendant  
5 understands that if the defendant is not a citizen of the United  
6 States, [you are hereby advised that conviction of the offense  
7 for which you have been charged] a conviction or a plea of  
8 guilty or no contest, whether acceptance of the plea is deferred  
9 or not, may have the consequences of deportation, exclusion from  
10 admission to the United States, or denial of naturalization  
11 pursuant to the laws of the United States. Upon request, the  
12 court shall allow the defendant additional time to consider the  
13 appropriateness of the plea in light of the advisement as  
14 described in this section."

15 SECTION 15. Section 806-83, Hawaii Revised Statutes, is  
16 amended by amending subsection (a), as effective until June 30,  
17 2008, to read as follows:

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

1 132D-10, and 132D-16); section 134-24 (place to keep unloaded  
2 firearms other than pistols and revolvers); section 134-7(a)  
3 and (b) (ownership or possession prohibited); section 134-8  
4 (prohibited ownership); section 134-9 (licenses to carry);  
5 section 134-17(a) (relating to false information or evidence  
6 concerning psychiatric or criminal history); section 134-51  
7 (deadly weapons); section 134-52 (switchblade knives); section  
8 134-53 (butterfly knives); section 188-23 (possession or use of  
9 explosives, electrofishing devices, and poisonous substances in  
10 state waters prohibited); section 231-34 (attempt to evade or  
11 defeat tax); section 231-36 (false and fraudulent statements);  
12 section 245-37 (sale or purchase of packages of cigarettes  
13 without stamps); section 245-38 (vending unstamped cigarettes);  
14 section 245-51 (sale of export cigarettes prohibited); section  
15 245-52 (alteration of packaging prohibited); section 291C-12.5  
16 (accidents involving substantial bodily injury); section 291E-  
17 61.5 (habitually operating a vehicle under the influence of an  
18 intoxicant); section 329-41 (prohibited acts B); section 329-42  
19 (prohibited acts C); section 329-43.5 (prohibited acts related  
20 to drug paraphernalia); section 329C-2 (manufacture,  
21 distribution, or possession with intent to distribute an  
22 imitation controlled substance to a person under eighteen years

1 of age); section 346-34(d)(2) and (e) (fraud involving food  
2 stamps or coupons with a value exceeding \$300); section 346-43.5  
3 (medical assistance fraud); section 383-141 (falsely obtaining  
4 benefits); section 431:10C-307.7 (insurance fraud); section  
5 482D-7 (violation of fineness standards and stamping  
6 requirements); section 485-8 (registration of securities);  
7 section 485-14 (registration of dealers, investment advisers,  
8 salespersons, and investment adviser representatives); section  
9 485-25 (fraudulent and other prohibited practices); section 707-  
10 703 (negligent homicide in the second degree); section 707-705  
11 (negligent injury in the first degree); section 707-711 (assault  
12 in the second degree); section 707-713 (reckless endangering in  
13 the first degree); section 707-721 (unlawful imprisonment in the  
14 first degree); section 707-726 (custodial interference in the  
15 first degree); section 707-757 (electronic enticement of a child  
16 in the second degree); section 707-766 (extortion in the second  
17 degree); section 708-811 (burglary in the second degree);  
18 section 708-812.6 (unauthorized entry in a dwelling); section  
19 708-821 (criminal property damage in the second degree); section  
20 708-831 (theft in the second degree); section 708-833.5  
21 (shoplifting); section 708-835.5 (theft of livestock); section

1 708-836 (unauthorized control of propelled vehicle); section  
2 708-836.5 (unauthorized entry into motor vehicle); section  
3 708-839.5 (theft of utility services); section 708-839.55  
4 (unauthorized possession of confidential personal information);  
5 section 708-839.8 (identity theft in the third degree); section  
6 708-852 (forgery in the second degree); section 708-854  
7 (criminal possession of a forgery device); section 708-858  
8 (suppressing a testamentary or recordable instrument); section  
9 708-875 (trademark counterfeiting); section 708-891.5 (computer  
10 fraud in the second degree); section 708-892.5 (computer damage  
11 in the second degree); section 708-895.6 (unauthorized computer  
12 access in the second degree); section 708-8100 (fraudulent use  
13 of a credit card); section 708-8102 (theft/forgery of credit  
14 cards); section 708-8103 (credit card fraud by a provider of  
15 goods or services); section 708-8104 (possession of unauthorized  
16 credit card machinery or incomplete cards); section 708-8200  
17 (cable television service fraud in the first degree); section  
18 708-8202 (telecommunication service fraud in the first degree);  
19 section 709-903.5 (endangering the welfare of a minor in the  
20 first degree); section 709-906 (abuse of family or household  
21 members); section 710- (obstruction of criminal  
22 investigations); section 710-1016.3 (obtaining a government-



1 issued identification document under false pretenses in the  
2 first degree); section 710-1016.6 (impersonating a law  
3 enforcement officer in the first degree); section 710-1017.5  
4 (sale or manufacture of deceptive identification document);  
5 section 710-1017(4) (tampering with a government record);  
6 section 710-1018 (securing the proceeds of an offense); section  
7 710-1021 (escape in the second degree); section 710-1023  
8 (promoting prison contraband in the second degree); section 710-  
9 1024 (bail jumping in the first degree); section 710-1029  
10 (hindering prosecution in the first degree); [~~section 710-1060~~  
11 ~~(perjury);~~] section 710-1061 (false swearing in official  
12 matters); section 710-1072 (tampering with a witness); section  
13 710-1072.5 (obstruction of justice); section 710-1076 (tampering  
14 with physical evidence); section 711-1103 (riot); section 711-  
15 1109.3 (cruelty to animals/fighting dogs); section 711-1110.9  
16 (violation of privacy in the first degree); section 711-1112  
17 (interference with the operator of a public transit vehicle);  
18 section 712-1221 (promoting gambling in the first degree);  
19 section 712-1222.5 (promoting gambling aboard ships); section  
20 712-1224 (possession of gambling records in the first degree);  
21 section 712-1243 (promoting a dangerous drug in the third  
22 degree); section 712-1246 (promoting a harmful drug in the third

1 degree); section 712-1247 (promoting a detrimental drug in the  
2 first degree); section 712-1249.6 (promoting a controlled  
3 substance in, on, or near schools or school vehicles); section  
4 803-42 (interception, access, and disclosure of wire, oral, or  
5 electronic communications, use of pen register, trap and trace  
6 device, and mobile tracking device prohibited); section 844D-  
7 111(b) (refusal or failure to provide specimen for forensic  
8 identification); or section [~~846E-9(b)~~] 846E-9 (failure to  
9 comply with covered offender registration requirements)."

10 SECTION 16. Section 806-83, Hawaii Revised Statutes, is  
11 amended by amending subsection (a), as effective on July 1,  
12 2008, to read as follows:

13 "(a) Criminal charges may be instituted by written  
14 information for a felony when the charge is a class C felony  
15 under section 19-3.5 (voter fraud); section 128D-10 (knowing  
16 releases); section 132D-14(a)(1), (2)(A), and (3) (penalties for  
17 failure to comply with requirements of sections 132D-7, 132D-10,  
18 and 132D-16); section 134-24 (place to keep unloaded firearms  
19 other than pistols and revolvers); section 134-7(a) and (b)  
20 (ownership or possession prohibited); section 134-8 (prohibited  
21 ownership); section 134-9 (licenses to carry); section 134-17(a)  
22 (relating to false information or evidence concerning

1 psychiatric or criminal history); section 134-51 (deadly  
2 weapons); section 134-52 (switchblade knives); section 134-53  
3 (butterfly knives); section 188-23 (possession or use of  
4 explosives, electrofishing devices, and poisonous substances in  
5 state waters prohibited); section 231-34 (attempt to evade or  
6 defeat tax); section 231-36 (false and fraudulent statements);  
7 section 245-37 (sale or purchase of packages of cigarettes  
8 without stamps); section 245-38 (vending unstamped cigarettes);  
9 section 245-51 (sale of export cigarettes prohibited); section  
10 245-52 (alteration of packaging prohibited); section 291C-12.5  
11 (accidents involving substantial bodily injury); section  
12 291E-61.5 (habitually operating a vehicle under the influence of  
13 an intoxicant); section 329-41 (prohibited acts B); section  
14 329-42 (prohibited acts C); section 329-43.5 (prohibited acts  
15 related to drug paraphernalia); section 329C-2 (manufacture,  
16 distribution, or possession with intent to distribute an  
17 imitation controlled substance to a person under eighteen years  
18 of age); section 346-34(d)(2) and (e) (fraud involving food  
19 stamps or coupons with a value exceeding \$300); section 346-43.5  
20 (medical assistance fraud); section 383-141 (falsely obtaining  
21 benefits); section 431:10C-307.7 (insurance fraud); section  
22 482D-7 (violation of fineness standards and stamping

1 requirements); section 485A-301 (registration of securities);  
2 section 485A-401 (registration of broker-dealers); section  
3 485A-402 (registration of agents); section 485A-403  
4 (registration of investment advisors); section 485A-404  
5 (registration of investment advisor representatives); section  
6 485A-405 (registration of federal covered investment advisors);  
7 section 485A-501 (general fraud); section 485A-502 (prohibited  
8 conduct in providing investment advice); section 707-703  
9 (negligent homicide in the second degree); section 707-705  
10 (negligent injury in the first degree); section 707-711 (assault  
11 in the second degree); section 707-713 (reckless endangering in  
12 the first degree); section 707-721 (unlawful imprisonment in the  
13 first degree); section 707-726 (custodial interference in the  
14 first degree); section 707-757 (electronic enticement of a child  
15 in the second degree); section 707-766 (extortion in the second  
16 degree); section 708-811 (burglary in the second degree);  
17 section 708-812.6 (unauthorized entry in a dwelling); section  
18 708-821 (criminal property damage in the second degree); section  
19 708-831 (theft in the second degree); section 708-833.5  
20 (shoplifting); section 708-835.5 (theft of livestock); section  
21 708-836 (unauthorized control of propelled vehicle); section  
22 708-836.5 (unauthorized entry into motor vehicle); section

1 708-839.5 (theft of utility services); section 708-839.55  
2 (unauthorized possession of confidential personal information);  
3 section 708-839.8 (identity theft in the third degree); section  
4 708-852 (forgery in the second degree); section 708-854  
5 (criminal possession of a forgery device); section 708-858  
6 (suppressing a testamentary or recordable instrument); section  
7 708-875 (trademark counterfeiting); section 708-891.5 (computer  
8 fraud in the second degree); section 708-892.5 (computer damage  
9 in the second degree); section 708-895.6 (unauthorized computer  
10 access in the second degree); section 708-8100 (fraudulent use  
11 of a credit card); section 708-8102 (theft/forgery of credit  
12 cards); section 708-8103 (credit card fraud by a provider of  
13 goods or services); section 708-8104 (possession of unauthorized  
14 credit card machinery or incomplete cards); section 708-8200  
15 (cable television service fraud in the first degree); section  
16 708-8202 (telecommunication service fraud in the first degree);  
17 section 709-903.5 (endangering the welfare of a minor in the  
18 first degree); section 709-906 (abuse of family or household  
19 members); section 710- (obstruction of criminal  
20 investigations); section 710-1016.3 (obtaining a government-  
21 issued identification document under false pretenses in the  
22 first degree); section 710-1016.6 (impersonating a law

1 enforcement officer in the first degree); section 710-1017(4)  
2 (tampering with a government record); section 710-1017.5 (sale  
3 or manufacture of deceptive identification document); section  
4 710-1018 (securing the proceeds of an offense); section 710-1021  
5 (escape in the second degree); section 710-1023 (promoting  
6 prison contraband in the second degree); section 710-1024 (bail  
7 jumping in the first degree); section 710-1029 (hindering  
8 prosecution in the first degree); [~~section 710-1060 (perjury);~~]  
9 section 710-1061 (false swearing in official matters); section  
10 710-1072 (tampering with a witness); section 710-1072.5  
11 (obstruction of justice); section 710-1076 (tampering with  
12 physical evidence); section 711-1103 (riot); section 711-1109.3  
13 (cruelty to animals/fighting dogs); section 711-1110.9  
14 (violation of privacy in the first degree); section 711-1112  
15 (interference with the operator of a public transit vehicle);  
16 section 712-1221 (promoting gambling in the first degree);  
17 section 712-1222.5 (promoting gambling aboard ships); section  
18 712-1224 (possession of gambling records in the first degree);  
19 section 712-1243 (promoting a dangerous drug in the third  
20 degree); section 712-1246 (promoting a harmful drug in the third  
21 degree); section 712-1247 (promoting a detrimental drug in the  
22 first degree); section 712-1249.6 (promoting a controlled

1 substance in, on, or near schools or school vehicles); section  
2 803-42 (interception, access, and disclosure of wire, oral, or  
3 electronic communications, use of pen register, trap and trace  
4 device, and mobile tracking device prohibited); section 844D-111  
5 (refusal or failure to provide specimen for forensic  
6 identification); or section [~~846E-9(b)~~] 846E-9 (failure to  
7 comply with covered offender registration requirements)."

8 SECTION 17. Section 806-83, Hawaii Revised Statutes, is  
9 amended by amending subsection (b) to read as follows:

10 "(b) Criminal charges may be instituted by written  
11 information for a felony when the charge is a class B felony  
12 under section 134-23 (place to keep loaded firearms other than  
13 pistols and revolvers); section 134-25 (place to keep pistol or  
14 revolver); section 134-26 (carrying or possessing a loaded  
15 firearm on a public highway); section 134-7(b) (ownership or  
16 possession prohibited); section 329-43.5 (prohibited acts  
17 related to drug paraphernalia); section 708-810 (burglary in the  
18 first degree); section 708-830 (theft in the first degree);  
19 section 708-839.7 (identity theft in the second degree); section  
20 708-851 (forgery in the first degree); section 708-891 (computer  
21 fraud in the first degree); section 708-892 (computer damage in  
22 the first degree); section 710-1060 (perjury); section 710-1071

1 (intimidating a witness); 710-1072.2 (retaliating against a  
2 witness); 710-1075.5 (retaliating against a juror); section 712-  
3 1240.8 (methamphetamine trafficking in the second degree);  
4 section 712-1242 (promoting a dangerous drug in the second  
5 degree); section 712-1245 (promoting a harmful drug in the  
6 second degree); or section 712-1249.5 (commercial promotion of  
7 marijuana in the second degree)."

8 SECTION 18. Section 844D-35, Hawaii Revised Statutes, is  
9 amended by amending subsection (b) to read as follows:

10 "(b) The person shall have any required blood specimens[~~7~~  
11 ~~samples, or print impressions~~] collected within twenty working  
12 days of being notified by the court[~~7~~] or a law enforcement  
13 agency or other entity authorized by the department. The buccal  
14 swab samples or print impressions shall be collected from the  
15 person at any time after the person is notified by the court or  
16 a law enforcement agency or other entity authorized by the  
17 department. The specimens, samples, or print impressions shall  
18 be collected in accordance with section 844D-21 at a  
19 correctional facility or a state, county, private, or other  
20 facility designated for this collection."

21 SECTION 19. Section 844D-37, Hawaii Revised Statutes, is  
22 amended by amending subsection (b) to read as follows:



1           "(b) If the person is not confined, the blood specimens [~~7~~  
2 ~~samples, or print impressions~~] required by this chapter shall be  
3 provided within twenty working days after the person reports to  
4 the supervising agent or within five calendar days of notice to  
5 the person, whichever occurs first. The buccal swab samples or  
6 print impressions required by this chapter shall be provided  
7 after the person reports to the supervising agent or after the  
8 person is notified of the samples and impressions required by  
9 this chapter, whichever occurs first. The person shall report  
10 to a correctional facility in the county where the person  
11 resides or temporarily is located to have the specimens,  
12 samples, or print impressions collected pursuant to this  
13 chapter. The specimens, samples, or print impressions shall be  
14 collected in accordance with this chapter."

15           SECTION 20. Section 844D-111, Hawaii Revised Statutes, is  
16 amended to read as follows:

17           "**§844D-111 Refusal or failure to provide specimen for**  
18 **forensic identification.** (a) A person commits the offense of  
19 refusal or failure to provide specimen for forensic  
20 identification if the person is required by this chapter to  
21 provide any blood specimens, buccal swab samples, or print  
22 impressions and [~~intentionally or~~] knowingly or negligently

1 refuses or fails to provide any of the required blood specimens,  
2 buccal swab samples, or print impressions after the person has  
3 received written notice from the department, the department of  
4 public safety, any law enforcement personnel, or an officer of  
5 the court that the person is required to provide each and every  
6 one of the blood specimens, buccal swab samples, and print  
7 impressions required by this chapter.

8 (b) Any person who knowingly violates subsection (a) shall  
9 be guilty of a class C felony.

10 [~~(b)~~] (c) Any person who negligently [~~or recklessly fails~~  
11 ~~to comply with this section~~] violates subsection (a) shall be  
12 guilty of a misdemeanor."

13 SECTION 21. Section 14 of this Act shall apply only to  
14 pleas entered or accepted after the effective date of this Act.  
15 Nothing in section 14 shall require the vacation of judgment and  
16 withdrawal of the plea or constitute grounds for finding a prior  
17 conviction invalid with respect to pleas entered or accepted  
18 prior to the effective date of this Act.

19 SECTION 22. Statutory material to be repealed is bracketed  
20 and stricken. New statutory material is underscored.

21

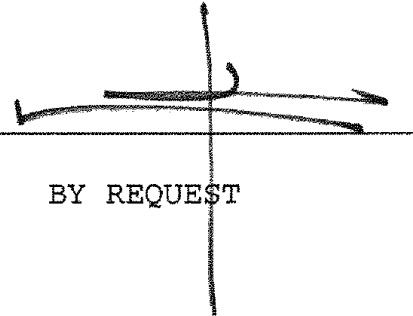
S .B. NO. 2963

1 SECTION 23. This Act shall take effect upon its approval,  
2 except that section 16 shall take effect on July 1, 2008.

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INTRODUCED BY: \_\_\_\_\_

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5

BY REQUEST

**Report Title:**

CRIMES; OBSTRUCTION OF JUSTICE; MURDER.

**Description:**

Strengthens laws relating to obstruction of justice; revises Hawaii's murder statute to better protect the public; and makes other criminal law changes.

JUSTIFICATION SHEET

DEPARTMENT: Attorney General

TITLE: A BILL FOR AN ACT RELATING TO CRIME.

PURPOSE: To add law enforcement officers to those who are considered to have a direct and tangible interest in public health statistic records, and thereby facilitate law enforcement's efforts to obtain such records during the course of investigations.

To amend the murder in the second degree statute to include acts committed with the intent to cause serious bodily injury to another person or create the strong probability of causing death or serious bodily injury to another person, which result in the death of another person.

To strengthen our laws related to public administration by creating a new offense that prohibits the obstruction of criminal investigations to address a deficiency in the laws, and by upgrading the following public administration offenses to reflect the seriousness of the offenses and to deter very harmful and disruptive conduct directed against government operations and the justice system: (1) tampering with a government record (section 710-1017) is made a class C felony when the offense is committed with intent to mislead a public servant; (2) perjury (section 710-1060) is made a class B felony; (3) false swearing in official matters (section 710-1061) is made a class C felony; (4) false swearing (section 710-1062) is made a misdemeanor; (5) intimidating a witness (section 710-1071) is made a class B felony; (6) tampering with a witness (section 710-1072) is made a class C felony; (7) retaliating against a witness (section 710-1072.2) is made a class B felony;

(8) retaliating against a juror (section 710-1075.5) is made a class B felony; and (9) tampering with physical evidence (section 710-1076) is made a class C felony.

To clarify the requirement that courts advise pleading defendants of the possible consequences of the plea upon alien status, such that the focus is on the defendant's understanding of the possible consequences of the plea and not upon how the court reads the advisement. The purpose of the statute has always been to ensure a defendant's understanding of the possible consequences of pleading guilty or nolo contendere, and not to ensure that a court has read the advisement verbatim to defendant.

To add sections 712-1240.8 (methamphetamine trafficking in the second degree), 708-812.6 (unauthorized entry in a dwelling), 708-839.55 (unauthorized possession of confidential personal information), 710- (obstruction of criminal investigations), 710-1017(4) (tampering with a government record), 710-1061 (false swearing in official matters), 710-1071 (intimidating a witness), 710-1072 (tampering with a witness), 710-1072.2 (retaliating against a witness), 710-1075.5 (retaliating against a juror), 710-1076 (tampering with physical evidence), and 844D-111(b) (refusal or failure to provide specimen for forensic identification) Hawaii Revised Statutes, to those felonies that may be initiated by information charging; and to amend the wording 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.

To clarify the state of mind requirements and grading for the offenses of refusing to provide a DNA buccal swab sample by making a knowing violation a class C felony and a negligent violation a misdemeanor; and to

eliminate the twenty-working-day or five-calendar-day periods allowed for the collection of DNA buccal swab samples from felons subject to collection.

To update section 706-606.5, Hawaii Revised Statutes, by deleting the reference to section 710-1071 in the list of C felony offenses subject to repeat offender sentencing because the offense is being upgraded to a B felony.

**MEANS:**

Add a new section to part II of chapter 710 and amend sections 338-18(b), 706-606.5, 707-701.5, 710-1017, 710-1060(3), 710-1061(2), 710-1062(2), 710-1071(3), 710-1072(2), 710-1072.2(3), 710-1075.5, 710-1076(3), 802E-2, 806-83(a) and (b), 844D-35(b), 844D-37(b), and 844D-111, Hawaii Revised Statutes.

**JUSTIFICATION:**

Generally, the Department of Health is not permitted to allow access to vital statistics records to law enforcement officers. Law enforcement officers sometimes need access to vital statistics records during the course of investigating or prosecuting a crime. For example, in homicide investigations, access to a death certificate can be helpful when deciding what charge, if any, to bring against a suspect. Another example would be the need to access birth certificates in sexual assault cases when the age of the victim or the age of the suspect needs to be ascertained by the investigator. Providing a narrow exception that would allow law enforcement officers access to vital statistics records (but only when needed in relation to their law enforcement duties and only when the request is signed under penalty of criminal prosecution for misuse) would allow more timely investigation of crimes where vital statistics records are needed.

In 2004, a Punchbowl man smashed a car window, doused his neighbor with gasoline and set him afire. At trial, the Defendant claimed that while he did attack and injure his neighbor, he never intended to kill him. The defendant, who was charged with attempted murder in the second degree, was convicted after trial of assault in the first degree. This amendment clarifies that individuals who act with the intent to cause serious bodily injury to another person or create the strong probability of causing death or serious bodily injury to another person, which act results in the death of another person, should be guilty of murder in the second degree because serious bodily injury includes bodily injury that creates a substantial risk of death. This approach is taken by other states. The amendment is modeled after an Illinois statute.

The current offenses against public administration are deficient and do not reflect the seriousness of the offenses nor do they provide adequate deterrence to such conduct. These offenses obstruct the performance of governmental functions and impair the justice system and its operations. Efforts to obstruct official investigations or proceedings, to offer false statements in official matters, to tamper with physical evidence, to coerce, intimidate or otherwise tamper with witnesses, or to retaliate against witnesses or jurors cannot be allowed. Such conduct completely undermines the integrity of government operations and the judicial process and destroys the confidence and trust that the public has in government and the justice system.

Section 802E-2 has required courts to administer a specific advisement to defendants concerning their alien status. Some courts have interpreted this mandate to mean that courts must read the statutory advisement verbatim and that upon any



deviation from that specific advisement, a court must vacate the judgment and allow the withdrawal of a defendant's plea. This bill makes the statutory language more consistent with Rule 11(c) of the Hawaii Rules of Penal Procedure, and makes it clear that the focus of the statute is not verbatim advisement, but careful determination that the defendant understands the consequences of the plea upon alien status.

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 not added to section 806-83, the information charging law. Inclusion of the class B felonies involving methamphetamine in section 806-83 would be consistent with 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 registration 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, and the omission of section 846E-9(d). 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.

Regarding sections 708-812.6 and 708-839.55, the class C felony offenses of unauthorized entry in a dwelling and unauthorized possession of confidential personal information were not in existence when Act 62 was enacted in 2004. The offenses of burglary in the first and second degrees are included in the information charging provisions. Unauthorized entry in a dwelling is another form of burglary and for purposes of consistency and efficiency, should also be included. Unauthorized

possession of confidential personal information is often charged along with forgery, theft, and identity theft offenses, all of which are included in the information charging provisions. Considering the number of civilian witnesses needed to present a forgery or theft type of case, the inclusion of the offense of unauthorized possession of confidential personal information would translate into a huge savings both in and out of the courtroom.

This bill also adds the newly upgraded felony offenses against public administration to the list of offenses that may be initiated by information charging for purposes of efficiency.

With the inclusion of the above charges, information charging will become an even greater asset to the criminal justice system in Hawaii in the years to come. More victims and witnesses will be spared from coming to court to testify at probable cause hearings, more officers will be able to stay on the job protecting and serving the community, and the State will continue to enjoy a financial savings while still protecting and preserving a suspect's rights.

This bill provides for more efficient collection of DNA samples to fulfill the intent of chapter 844D to establish a comprehensive DNA database and databank identification program. All individuals convicted of a felony offense are required to submit a DNA buccal swab sample for the purpose of establishing a DNA database that can be used to solve crimes, including cold cases, and exonerate the innocent. However, currently, if a felon refuses to comply with the law, the only mechanism to obtain compliance is the threat of a misdemeanor prosecution. For offenders who have already been convicted of felony offenses, an additional misdemeanor charge is not likely

to deter their actions. The refusal to provide the DNA buccal swab sample should amount to a felony offense because the DNA database is critical for efficient and fair law enforcement and a felony level offense will more likely result in compliance by offenders.

This bill corrects the state of mind provisions in the classification of the crime of refusal to provide the DNA specimen and makes it consistent with the state of mind of this crime. A knowing violation is a class C felony and a negligent violation is a misdemeanor

Sections 844D-35(b) and 844D-37(b) currently require that the felon on probation, parole, or other supervised release and the felon accepted into Hawaii from other jurisdictions provide the required DNA sample within a specified number of days after notification of the DNA requirement. This notice period was likely intended to duplicate the notice period required for the collection of blood samples from sex offenders. This notice period was deemed necessary due to the invasive nature of the blood draw. The DNA buccal swab collection, however, is comparatively non-invasive as it only involves a cotton swabbing of the felon's mouth. This bill provides for the immediate collection of the buccal swab samples, without the notice period, and will ensure that those felons under the specified supervision will comply with the DNA collection requirement and will not have the opportunity to avoid providing the buccal swab sample upon notification.

Impact on the public: This bill will be beneficial to the public interest because it would allow crimes where vital statistics records are needed as evidence to be investigated quicker and more efficiently.

The amendment to the murder in the second degree statute will result in individuals being appropriately punished for their crimes and will provide greater deterrence, foster public confidence, and promote public safety.

The stronger penalties for the offenses against public administration will provide greater deterrent and at the same time foster greater public confidence and trust in government operations and the judicial process. With less obstruction and harmful conduct, there should be more public support and cooperation with investigations and official proceedings, which in turn should lead to more efficient, effective, fair, and just investigations and judicial action.

With the additional offenses that could be charged via information, lay witnesses for these cases would be required to testify less often.

The public will benefit from the more efficient collection of buccal swab samples because such collection will result in a more complete and reliable DNA database that will enable solving crimes, including cold cases, and the exoneration of innocent parties.

Impact on the department and other agencies:  
This bill will help the department and other agencies because it would enable access to vital statistic records that will expedite the investigation of certain crimes.

The stronger penalties for the offenses against public administration will provide greater deterrence, foster public confidence, encourage greater cooperation, and allow agencies and the Judiciary to provide more efficient, effective, fair, and just process.

This bill will make it clear that the courts are not being compelled to read the advisement concerning alien status to the defendant verbatim, but are being required to make sure that defendants understand the possible consequences of a guilty or no contest plea upon alien status.

With the additional offenses that could be charged via information, police witnesses for these types of cases 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 would no longer be necessary.

With respect to the DNA bucal swab sampling provisions, this bill will provide clearer guidelines that will eliminate undue delay in DNA testing procedures and reduce legal challenges.

GENERAL FUND: None.

OTHER FUNDS: None.

PPBS PROGRAM DESIGNATION: None.

OTHER AFFECTED AGENCIES: Department of Health, Judiciary, county police, county prosecutors, Hawaii Paroling Authority, and the Office of the Public Defender.

EFFECTIVE DATE: Upon approval, except that section 16 of the bill shall take effect on July 1, 2008.