

Honolulu, Hawaii
Feb 28, 2008

RE: H.B. No. 3041
H.D. 1

Honorable Calvin K.Y. Say
Speaker, House of Representatives
Twenty-Fourth State Legislature
Regular Session of 2008
State of Hawaii

Sir:

Your Committee on Judiciary, to which was referred H.B. No. 3041 entitled:

"A BILL FOR AN ACT RELATING TO CRIME,"

begs leave to report as follows:

The purpose of this bill is to improve the administration of criminal justice in Hawaii and to ensure that criminal offenders are held accountable for their conduct.

Specifically, this bill:

- (1) Adds a new offense of obstruction of criminal investigation and increases the penalties for various existing offenses related to public administration offenses;
- (2) Authorizes law enforcement officers to gain access to public health statistics records in criminal investigations;
- (3) Amends the definition of murder in the second degree to include causing the death of another person while acting with intent to cause serious bodily injury or in a way that creates a strong probability of causing serious bodily injury or death;



- (4) Clarifies the procedure by which a court advises a defendant of the immigration consequences of a plea of guilty or no contest upon entry of the plea;
- (5) Adds various offenses to those which may be initiated by information charging; and
- (6) Clarifies the procedure by which genetic material and fingerprints are collected and increases the offense of knowing failure to provide genetic material and fingerprints from a misdemeanor to a class C felony.

The Attorney General (AG), City and County of Honolulu Department of the Prosecuting Attorney, County of Maui Department of the Prosecuting Attorney, Honolulu Police Department, Maui County Police Department, Hawaii County Police Department, and a concerned individual supported this bill. The Office of the Public Defender opposed this measure.

The AG supported the amendments to the definition of murder in the second degree because certain offenders charged with murder or attempted murder were convicted of lesser offenses. Specifically, an offender charged with murder for beating a person to death was convicted of the lesser offense of manslaughter because the jury believed his testimony that he had only intended to cause bodily injury to the person, not death. In another case, an offender charged with attempted murder after dousing his neighbor with gasoline and setting him afire was convicted of the lesser offense of assault in the first degree because the jury believed his testimony that it was not his intent to kill the person and, in fact, the person survived.

Your Committee finds that the Hawaii Penal Code assigns culpability based on the state of mind with which the offender acts when committing the specified offense. In homicide cases, an offender who intentionally or knowingly causes the death of another person is guilty of murder, unless by reason of extreme mental or emotional disturbance in which case the offense is reduced to manslaughter. If an offender recklessly causes the death of another person, the offender is also guilty of manslaughter. In the first case referenced by the AG, the offender was convicted of manslaughter because the jury found that the offender, while intending only to cause bodily injury, had recklessly caused the other person's death. In the second case, the offender was convicted of assault in the first degree because



the jury found that the offender intended to cause serious bodily injury, not death, and the person survived.

Your Committee notes that the offender in the second case could not be convicted of attempted manslaughter because the Hawaii Supreme Court held in State v. Holbron, 80 Hawaii 27 (1995), that a person cannot attempt to recklessly cause the death of another person. As a result, the offense dropped all the way from attempted murder, with a mandatory sentence of life in prison, down to the class B felony offense of assault in the first degree, with a maximum of ten years in prison and the possibility of probation. Under current law, there is no intermediate class A felony offense for which the offender may be sentenced to a 20 year prison term when not convicted of attempted murder.

Upon further consideration, your Committee has amended this bill by:

- (1) Deleting the amendments to the definition of murder in the second degree and instead making it a defense to attempted murder, which reduces the offense to attempted manslaughter, a class A felony for which the offender may be sentenced to 20 years in prison, that the defendant, with intent to do serious bodily injury to another person, engaged in a course of conduct in reckless disregard of a substantial risk of killing the other person;
- (2) Deleting the provisions establishing the new offense of obstruction of criminal investigations and increasing penalties for various existing offenses related to public administration offenses because the AG could not give specific examples illustrating the perceived shortcomings of existing law;
- (3) Limiting law enforcement officers access to health records only to birth certificates in cases of sexual assault and death certificates in cases of homicide;
- (4) Requiring that the clarified procedure by which a court advises a defendant of the immigration consequences of a plea of guilty or no contest be employed before the plea is entered;

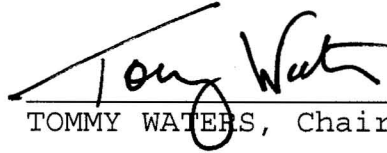


- (5) Deleting the section that would amend a portion of the information charging law because that provision remains in effect only until June 30, 2008, and this measure likely will not become law before then;
- (6) Adding language that exempts persons convicted of a first offense of excessive speeding from having to post proof of financial responsibility to help reduce the enormous backlog of these cases in the district courts where first offenders are contesting their cases primarily because of the insurance implications;
- (7) Raising the threshold for felony theft to \$1,000 because the threshold has not changed since it was set at \$300 in 1986, despite the rate of inflation;
- (8) Excluding from the definition of robbery in the second degree shoplifting cases in which the defendant struggles with store personnel while attempting to flee the premises;
- (9) Adding a savings clause to ensure that this measure does not violate the ex post facto clause of the United States Constitution;
- (10) Changing the effective date to July 1, 2112, except for section 7 which is effective July 1, 2111, to facilitate further discussion of the issues raised by this measure; and
- (11) Making technical, nonsubstantive amendments for clarity, consistency, and style.

As affirmed by the record of votes of the members of your Committee on Judiciary that is attached to this report, your Committee is in accord with the intent and purpose of H.B. No. 3041, as amended herein, and recommends that it pass Second Reading in the form attached hereto as H.B. No. 3041, H.D. 1, and be placed on the calendar for Third Reading.



Respectfully submitted on
behalf of the members of the
Committee on Judiciary,


TOMMY WATERS, Chair



Record of Votes of the Committee on Judiciary

Bill/Resolution No.: HB 3041	Committee Referral: JUD	Date: 2-26-08		
<input type="checkbox"/> The committee is reconsidering its previous decision on the measure.				
The recommendation is to: <input type="checkbox"/> Pass, unamended (as is) <input checked="" type="checkbox"/> Pass, with amendments (HD) <input type="checkbox"/> Hold <input type="checkbox"/> Pass short form bill with HD to recommit for future public hearing (recommit)				
JUD Members	Ayes	Ayes (WR)	Nays	Excused
1. WATERS, Tommy (C)	✓			
2. OSHIRO, Blake K. (VC)	✓			
3. EVANS, Cindy				✓
4. GREEN, Josh, M.D.				✓
5. ITO, Ken	✓			
6. LUKE, Sylvia	✓			
7. McKELVEY, Angus L.K.				✓
8. MORITA, Hermina M.				✓
9. SONSON, Alex M.				✓
10. SOUKI, Joseph M.	✓			
11. TSUJI, Clift	✓			
12. YAMANE, Ryan I.	✓			
13. YAMASHITA, Kyle T.	✓			
14. MARUMOTO, Barbara C.		✓		
15. PINE, Kymberly Marcos		✓		
16. THIELEN, Cynthia				✓
TOTAL (16)	8	2		6
The recommendation is: <input checked="" type="checkbox"/> Adopted <input type="checkbox"/> Not Adopted If joint referral, _____ did not support recommendation. committee acronym(s)				
Vice Chair's or designee's signature:				
Distribution: Original (White) – Committee Duplicate (Yellow) – Chief Clerk's Office				