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LATE TESTIMONY

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DATE: February 12, 2008
TO: House Sgt.-At-Arms
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PAGES: 3 (Including this transmittal)

RE: H.B. 3041, Relating to Crime

Committee on Judiciary

Hrg Date: Tuesday, February 12, 2008

Time: 2:05 P.M.

Place: Conference Room 325, State Capitol

3 copies to Committee Chair

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HOUSE OF
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February 12, 2008

THE HONORABLE TOMMY WATERS, CHAIR
THE HONORABLE BLAKE K. OSHIRO, VICE-CHAIR
COMMITTEE ON JUDICIARY

HOUSE OF REPRESENTATIVES
THE TWENTY-FOURTH LEGISLATURE
REGULAR SESSION OF 2008
STATE OF HAWAII

TESTIMONY OF BENJAMIN M. ACOB,
PROSECUTING ATTORNEY FOR THE COUNTY OF MAUI,
IN SUPPORT OF HOUSE BILL NO. 3041
RELATING TO CRIME

The Honorable Chairpersons and Committee Members:

The Department of the Prosecuting Attorney for the County of Maui strongly supports H.B. 3041 Relating to Crime.

This bill has several purposes. First, the bill promotes respect for the criminal justice system by strengthening our laws pertaining to offenses against public administration. More specifically, this bill upgrades the penalties for offenses involving tampering with a government record or evidence, intimidating or retaliating against a witness or juror, respectively, and making false or misleading statements in official matters.

Second, the bill assists law enforcement by allowing access to public health statistical records in cases where such records are relevant to the criminal investigation. Currently, law enforcement must obtain a court subpoena and complete various forms in order to get copies of these records.

Third, the bill broadens the scope of the current murder in the second degree law. Specifically, the proposal allows prosecution for that crime where an individual acts with the

intent to cause serious bodily injury to another person or creates the strong possibility of causing death or serious bodily injury to another person. Other states take a similar approach.

Fourth, the bill places substance over form by amending HRS § 802E-2 to require the court to personally address the defendant in open court to determine whether the defendant understands the consequences of the plea with respect to deportation, naturalization, and exclusion from the United States. Currently, unless the judge utters the "magic words" of the statute, the appellate courts have mandated withdrawal of the plea. This is extremely troublesome. Unfortunately, we have seen cases where a defendant seeks to withdraw his plea years later, and typically only after the commencement of deportation proceedings.

Fifth, the bill provides for harsher penalties where a defendant knowingly refuses to provide a DNA sample as required by law. The ultimate goal here is to create a database to assist law enforcement officers in solving crimes, including cold cases, as well as exonerating the innocent.

Finally, the bill seeks to update Hawaii's information charging law, HRS § 806-83, to permit information charging in cases where recently enacted class B and C felony offenses are not included in the statute.

Based upon all of the above, our Department strongly supports H.B. 3041. We believe that these proposals will not only assist with law enforcement's efforts in seeking justice, but they will also promote respect and confidence in the law.

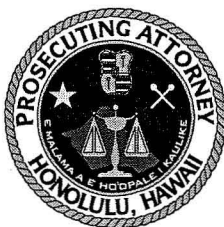
(H.B. 3041, Relating to Crime.)

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LATE TESTIMONY

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THE HONORABLE TOMMY WATERS, CHAIR
HOUSE COMMITTEE ON JUDICIARY
Twenty-Fourth State Legislature
Regular Session of 2008
State of Hawaii

February 12, 2008

RE: H.B. 3041; RELATING TO CRIME

Chair Waters and members of the House Judiciary Committee, the Department of the Prosecuting Attorney submits the following testimony in strong support of House Bill 3041.

The purpose of this bill is to make various amendments to various statutes to improve the enforcement of the law by: 1) permitting law enforcement officers access to public health records in certain circumstances; 2) clarifying that the court need not read advisements verbatim to alien defendants regarding the consequences of pleading guilty or no contest to a charge, but must simply address the defendant personally in open court and determine that he or she understands the potential impact on the defendant's immigration status; and 3) adding additional offenses that may be charged by information. In addition, H.B. 3041 strengthens criminal laws relating to murder in the second degree, public administration offenses, and the knowing violation of the refusal or failure to provide a specimen for forensic identification when such specimen is required under Hawaii Revised Statutes (HRS) chapter 844D.

We strongly support this bill. In particular, we support the amendment of second degree murder offense, the addition of various offenses to the list of those felonies that may be initiated by information and the amendments to HRS section 802E-2 regarding the advisement which must be given to defendants regarding their immigration status.

The amendment to the murder in the second degree statute intended to encompass cases where defendants have performed acts that create a strong probability of serious bodily injury or death and such acts cause the death of another person or when a person performs acts with the intent to do serious bodily injury to another person and such acts cause the death of another person. Typically, these amendments will apply to defendants who assault and beat a victim and cause such serious injuries that the victim dies. Since the current language of the second degree murder statute requires that a defendant intentionally or knowingly cause the death of another person, defendants who have beaten victims to death have sometimes been able to successfully escape murder convictions by claiming they did not intend to kill the victim because they only intended to seriously injure the victim; the proposed amendment would prevent this.

In addition, we strongly support the amendments to HRS section 806-83 which adds various felonies to the list of offenses which can be initiated by information. Information charging, which was authorized by the legislature in 2004, has been proven to be both

effective and efficient. It has spared numerous witnesses from having to appear at probable cause hearings; civilian witnesses have avoided having to take off of work or find child care in order to appear at the probable cause hearing. Police witnesses have been able to remain on the job and provide our communities with necessary patrol and criminal investigative services. The expansion of information charging is expected to provide further and greater benefits to more witnesses without jeopardizing defendants' rights.

Finally, we also strongly support the changes to HRS section 802E-3. As currently drafted, HRS section 802E-3 has sometimes been interpreted to require that a court read a statutory advisement regarding immigration consequences verbatim to alien defendants who are considering pleading guilty or no contest. The amendments proposed in H.B. 3041 would clarify that a verbatim reading is not required but that ensuring the alien defendant understands the consequences of his plea is required.

For these reasons, we strongly support the passage of H.B. 3041 and thank you for this opportunity to testify.