

JAN 26 2009

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# A BILL FOR AN ACT

RELATING TO PUBLIC ADMINISTRATION.

**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 three new sections to be  
3 appropriately designated and to read as follows:

4       "§710-A 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).

17       (3) Obstruction of criminal investigations is a class C

18 felony.

1        **§710-B Tampering with a government record in the first**  
2 **degree.** (1) A person commits the offense of tampering with a  
3 government record in the first degree if the person commits  
4 tampering with a government record with the intent to impede,  
5 obstruct, or mislead a public servant in the performance of any  
6 governmental function, including but not limited to any  
7 administrative or criminal investigation or related official  
8 proceeding.

9        (2) Tampering with a government record in the first degree  
10 is a class C felony.

11        **§710-C Tampering with a government record in the second**  
12 **degree.** (1) A person commits the offense of tampering with a  
13 government record in the second degree if the person commits  
14 tampering with a government record other than as provided in  
15 section 710-B.

16        (2) Tampering with a government record in the second  
17 degree is a misdemeanor."

18        SECTION 2. Section 706-606.5, Hawaii Revised Statutes, is  
19 amended by amending subsection (1) to read as follows:

20        "(1) Notwithstanding section 706-669 and any other law to  
21 the contrary, any person convicted of murder in the second  
22 degree, any class A felony, any class B felony, or any of the

1 following class C felonies: section 188-23 relating to  
2 possession or use of explosives, electrofishing devices, and  
3 poisonous substances in state waters; section 386-98(d)(1)  
4 relating to fraud violations and penalties; section 431:10A-  
5 131(b)(2) relating to insurance fraud; section 431:10C-  
6 307.7(b)(2) relating to insurance fraud; section 432:1-106(b)(2)  
7 relating to insurance fraud; section 432D-18.5(b)(2) relating to  
8 insurance fraud; section 707-703 relating to negligent homicide  
9 in the second degree; section 707-711 relating to assault in the  
10 second degree; section 707-713 relating to reckless endangering  
11 in the first degree; section 707-716 relating to terroristic  
12 threatening in the first degree; section 707-721 relating to  
13 unlawful imprisonment in the first degree; section 707-732  
14 relating to sexual assault or rape in the third degree; section  
15 707-752 relating to promoting child abuse in the third degree;  
16 section 707-757 relating to electronic enticement of a child in  
17 the second degree; section 707-766 relating to extortion in the  
18 second degree; section 708-811 relating to burglary in the  
19 second degree; section 708-821 relating to criminal property  
20 damage in the second degree; section 708-831 relating to theft  
21 in the first degree as amended by Act 68, Session Laws of Hawaii  
22 1981; section 708-831 relating to theft in the second degree;

1 section 708-835.5 relating to theft of livestock; section 708-  
2 836 relating to unauthorized control of propelled vehicle;  
3 section 708-839.8 relating to identity theft in the third  
4 degree; section 708-839.55 relating to unauthorized possession  
5 of confidential personal information; section 708-852 relating  
6 to forgery in the second degree; section 708-854 relating to  
7 criminal possession of a forgery device; section 708-875  
8 relating to trademark counterfeiting; [~~section 710-1071 relating~~  
9 ~~to intimidating a witness;~~] section 711-1103 relating to riot;  
10 section 712-1203 relating to promoting prostitution in the  
11 second degree; section 712-1221 relating to gambling in the  
12 first degree; section 712-1224 relating to possession of  
13 gambling records in the first degree; section 712-1243 relating  
14 to promoting a dangerous drug in the third degree; section 712-  
15 1247 relating to promoting a detrimental drug in the first  
16 degree; section 846E-9 relating to failure to comply with  
17 covered offender registration requirements; section 134-7  
18 relating to ownership or possession of firearms or ammunition by  
19 persons convicted of certain crimes; section 134-8 relating to  
20 ownership, etc., of prohibited weapons; section 134-9 relating  
21 to permits to carry, or who is convicted of attempting to commit  
22 murder in the second degree, any class A felony, any class B

1 felony, or any of the class C felony offenses enumerated above  
2 and who has a prior conviction or prior convictions for the  
3 following felonies, including an attempt to commit the same:  
4 murder, murder in the first or second degree, a class A felony,  
5 a class B felony, any of the class C felony offenses enumerated  
6 above, or any felony conviction of another jurisdiction, shall  
7 be sentenced to a mandatory minimum period of imprisonment  
8 without possibility of parole during such period as follows:

9 (a) One prior felony conviction:

10 (i) Where the instant conviction is for murder in the  
11 second degree or attempted murder in the second  
12 degree--ten years;

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

15 (iii) Where the instant conviction is for a class B  
16 felony--three years, four months; and

17 (iv) Where the instant conviction is for a class C  
18 felony offense enumerated above--one year, eight  
19 months;

20 (b) Two prior felony convictions:

1 (i) Where the instant conviction is for murder in the  
2 second degree or attempted murder in the second  
3 degree--twenty years;

4 (ii) Where the instant conviction is for a class A  
5 felony--thirteen years, four months;

6 (iii) Where the instant conviction is for a class B  
7 felony--six years, eight months;

8 (iv) Where the instant conviction is for a class C  
9 felony offense enumerated above--three years,  
10 four months;

11 (c) Three or more prior felony convictions:

12 (i) Where the instant conviction is for murder in the  
13 second degree or attempted murder in the second  
14 degree--thirty years;

15 (ii) Where the instant conviction is for a class A  
16 felony--twenty years;

17 (iii) Where the instant conviction is for a class B  
18 felony--ten years; and

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

21 SECTION 3. Section 710-1017, Hawaii Revised Statutes, is  
22 amended to read as follows:

1       "§710-1017 Tampering with a government record[-],

2 defined. (1) A person commits the offense of tampering with a  
3 government record if:

4       (a) The person knowingly and falsely makes, completes, or  
5       alters, or knowingly makes a false entry in, a written  
6       instrument which is or purports to be a government  
7       record or a true copy thereof; or

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

14      (c) The person knowingly records, registers, or files, or  
15      offers for recordation, registration, or filing, in a  
16      governmental office or agency, a written statement  
17      which has been falsely made, completed, or altered, or  
18      in which a false entry has been made, or which  
19      contains a false statement or false information; or

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

- 1 (i) The person intentionally destroys, mutilates,  
2 conceals, removes, or otherwise impairs the  
3 availability of any government records; or  
4 (ii) The person refuses to deliver up a government  
5 record in the person's possession upon proper  
6 request of a public servant entitled to receive  
7 such record for examination or other purposes.

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

13 [~~(3) Tampering with government records is a misdemeanor.~~]"

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

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

17 SECTION 5. Section 710-1061, Hawaii Revised Statutes, is  
18 amended by amending subsection (2) to read as follows:

19 "(2) False swearing in official matters is a  
20 [~~misdemeanor.~~] class C felony."

21 SECTION 6. Section 710-1062, Hawaii Revised Statutes, is  
22 amended by amending subsection (2) to read as follows:



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

2           SECTION 7. Section 710-1071, Hawaii Revised Statutes, is  
3 amended by amending subsection (3) to read as follows:

4           "(3) Intimidating a witness is a class [C] B felony."

5           SECTION 8. Section 710-1072, Hawaii Revised Statutes, is  
6 amended by amending subsection (2) to read as follows:

7           "(2) Tampering with a witness is a [~~misdemeanor.~~] class C  
8 felony."

9           SECTION 9. Section 710-1072.2, Hawaii Revised Statutes, is  
10 amended by amending subsection (3) to read as follows:

11           "(3) Retaliating against a witness is a class [C] B  
12 felony."

13           SECTION 10. Section 710-1075.5, Hawaii Revised Statutes,  
14 is amended to read as follows:

15           "~~[+]~~**§710-1075.5**~~[+]~~ **Retaliating against a juror.** (1) A  
16 person commits the offense of retaliating against a juror if the  
17 person uses force upon or threatens a juror or another person or  
18 damages the property of a juror or another person because of the  
19 vote, opinion, decision, or other action of the juror in an  
20 official proceeding.

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

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

2           SECTION 11. Section 710-1076, Hawaii Revised Statutes, is  
3 amended by amending subsection (3) to read as follows:

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

6           SECTION 12. Section 806-83, Hawaii Revised Statutes, is  
7 amended by amending subsections (a) and (b) to read as follows:

8           "(a) Criminal charges may be instituted by written  
9 information for a felony when the charge is a class C felony  
10 under section 19-3.5 (voter fraud); section 128D-10 (knowing  
11 releases); section 132D-14(a)(1), (2)(A), and (3) (penalties for  
12 failure to comply with requirements of sections 132D-7, 132D-10,  
13 and 132D-16); section 134-24 (place to keep unloaded firearms  
14 other than pistols and revolvers); section 134-7(a) and (b)  
15 (ownership or possession prohibited); section 134-8 (prohibited  
16 ownership); section 134-9 (licenses to carry); section 134-17(a)  
17 (relating to false information or evidence concerning  
18 psychiatric or criminal history); section 134-51 (deadly  
19 weapons); section 134-52 (switchblade knives); section 134-53  
20 (butterfly knives); section 188-23 (possession or use of  
21 explosives, electrofishing devices, and poisonous substances in  
22 state waters prohibited); section 231-34 (attempt to evade or

1 defeat tax); section 231-36 (false and fraudulent statements);  
2 section 245-37 (sale or purchase of packages of cigarettes  
3 without stamps); section 245-38 (vending unstamped cigarettes);  
4 section 245-51 (sale of export cigarettes prohibited); section  
5 245-52 (alteration of packaging prohibited); section 291C-12.5  
6 (accidents involving substantial bodily injury); section  
7 291E-61.5 (habitually operating a vehicle under the influence of  
8 an intoxicant); section 329-41 (prohibited acts B); section  
9 329-42 (prohibited acts C); section 329-43.5 (prohibited acts  
10 related to drug paraphernalia); section 329C-2 (manufacture,  
11 distribution, or possession with intent to distribute an  
12 imitation controlled substance to a person under eighteen years  
13 of age); section 346-34(d)(2) and (e) (fraud involving food  
14 stamps or coupons with a value exceeding \$300); section 346-43.5  
15 (medical assistance fraud); section 383-141 (falsely obtaining  
16 benefits); section 431:10C-307.7 (insurance fraud); section  
17 482D-7 (violation of fineness standards and stamping  
18 requirements); section 485A-301 (registration of securities);  
19 section 485A-401 (registration of broker-dealers); section  
20 485A-402 (registration of agents); section 485A-403  
21 (registration of investment advisors); section 485A-404  
22 (registration of investment advisor representatives); section

1 485A-405 (registration of federal covered investment advisors);  
2 section 485A-501 (general fraud); section 485A-502 (prohibited  
3 conduct in providing investment advice); section 707-703  
4 (negligent homicide in the second degree); section 707-705  
5 (negligent injury in the first degree); section 707-711 (assault  
6 in the second degree); section 707-713 (reckless endangering in  
7 the first degree); section 707-721 (unlawful imprisonment in the  
8 first degree); section 707-726 (custodial interference in the  
9 first degree); section 707-757 (electronic enticement of a child  
10 in the second degree); section 707-766 (extortion in the second  
11 degree); section 708-811 (burglary in the second degree);  
12 section 708-821 (criminal property damage in the second degree);  
13 section 708-831 (theft in the second degree); section 708-833.5  
14 (shoplifting); section 708-835.5 (theft of livestock); section  
15 708-836 (unauthorized control of propelled vehicle); section  
16 708-836.5 (unauthorized entry into motor vehicle); section  
17 708-839.5 (theft of utility services); section 708-839.8  
18 (identity theft in the third degree); section 708-852 (forgery  
19 in the second degree); section 708-854 (criminal possession of a  
20 forgery device); section 708-858 (suppressing a testamentary or  
21 recordable instrument); section 708-875 (trademark  
22 counterfeiting); section 708-891.5 (computer fraud in the second

1 degree); section 708-892.5 (computer damage in the second  
2 degree); section 708-895.6 (unauthorized computer access in the  
3 second degree); section 708-8100 (fraudulent use of a credit  
4 card); section 708-8102 (theft/forgery of credit cards); section  
5 708-8103 (credit card fraud by a provider of goods or services);  
6 section 708-8104 (possession of unauthorized credit card  
7 machinery or incomplete cards); section 708-8200 (cable  
8 television service fraud in the first degree); section 708-8202  
9 (telecommunication service fraud in the first degree); section  
10 709-903.5 (endangering the welfare of a minor in the first  
11 degree); section 709-906 (abuse of family or household members);  
12 section 710-A (obstruction of criminal investigations); section  
13 710-1016.3 (obtaining a government-issued identification  
14 document under false pretenses in the first degree); section  
15 710-1016.6 (impersonating a law enforcement officer in the first  
16 degree); section 710-B (tampering with a government record in  
17 the first degree); section 710-1017.5 (sale or manufacture of  
18 deceptive identification document); section 710-1018 (securing  
19 the proceeds of an offense); section 710-1021 (escape in the  
20 second degree); section 710-1023 (promoting prison contraband in  
21 the second degree); section 710-1024 (bail jumping in the first  
22 degree); section 710-1029 (hindering prosecution in the first

1 degree); [~~section 710-1060 (perjury);~~] section 710-1061 (false  
2 swearing in official matters); section 710-1072 (tampering with  
3 a witness); section 710-1072.5 (obstruction of justice); section  
4 710-1076 (tampering with physical evidence); section 711-1103  
5 (riot); section 711-1109.3 (cruelty to animals/fighting dogs);  
6 section 711-1110.9 (violation of privacy in the first degree);  
7 section 711-1112 (interference with the operator of a public  
8 transit vehicle); section 712-1221 (promoting gambling in the  
9 first degree); section 712-1222.5 (promoting gambling aboard  
10 ships); section 712-1224 (possession of gambling records in the  
11 first degree); section 712-1243 (promoting a dangerous drug in  
12 the third degree); section 712-1246 (promoting a harmful drug in  
13 the third degree); section 712-1247 (promoting a detrimental  
14 drug in the first degree); section 712-1249.6 (promoting a  
15 controlled substance in, on, or near schools or school  
16 vehicles); section 803-42 (interception, access, and disclosure  
17 of wire, oral, or electronic communications, use of pen  
18 register, trap and trace device, and mobile tracking device  
19 prohibited); or section 846E-9 (failure to comply with covered  
20 offender registration requirements).

21 (b) Criminal charges may be instituted by written  
22 information for a felony when the charge is a class B felony

1 under section 134-23 (place to keep loaded firearms other than  
2 pistols and revolvers); section 134-25 (place to keep pistol or  
3 revolver); section 134-26 (carrying or possessing a loaded  
4 firearm on a public highway); section 134-7(b) (ownership or  
5 possession prohibited); section 329-43.5 (prohibited acts  
6 related to drug paraphernalia); section 708-810 (burglary in the  
7 first degree); section 708-830 (theft in the first degree);  
8 section 708-839.7 (identity theft in the second degree); section  
9 708-851 (forgery in the first degree); section 708-891 (computer  
10 fraud in the first degree); section 708-892 (computer damage in  
11 the first degree); section 710-1060 (perjury); section 710-1071  
12 (intimidating a witness); 710-1072.2 (retaliating against a  
13 witness); 710-1075.5 (retaliating against a juror); section 712-  
14 1242 (promoting a dangerous drug in the second degree); section  
15 712-1245 (promoting a harmful drug in the second degree); or  
16 section 712-1249.5 (commercial promotion of marijuana in the  
17 second degree)."

18 SECTION 13. In codifying the new sections added to chapter  
19 710, Hawaii Revised Statutes, by section 1 of this Act, the  
20 revisor of statutes shall substitute appropriate section numbers  
21 for the letters used in the designations of, and references to,  
22 those new sections in this Act.

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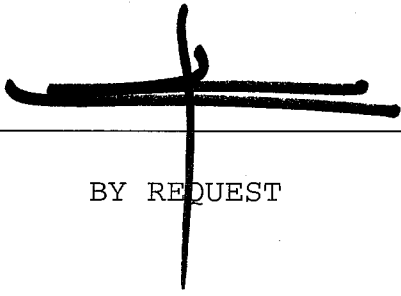
1 SECTION 14. This Act does not affect rights and duties  
2 that matured, penalties that were incurred, and proceedings that  
3 were begun, before the effective date of this Act.

4 SECTION 15. Statutory material to be repealed is bracketed  
5 and stricken. New statutory material is underscored.

6 SECTION 16. This Act shall take effect upon its approval.

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8  
9

INTRODUCED BY:

  
BY REQUEST



**Report Title:**

Public Administration

**Description:**

To strengthen our laws related to public administration by creating a new offense that prohibits the obstruction of criminal investigations, and by upgrading certain public administration offenses to reflect the seriousness of the offenses.

SB 840

JUSTIFICATION SHEET

DEPARTMENT: Attorney General

TITLE: A BILL FOR AN ACT RELATING TO PUBLIC ADMINISTRATION.

PURPOSE: To strengthen Hawaii's laws related to administration by: (1) creating a new offense that prohibits the obstruction of criminal investigations, to address a deficiency in the laws; (2) creating a new offense that makes it a class C felony to tamper with government records with the intent to mislead a public servant; and (3) upgrading several 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. The upgraded offenses are: (1) perjury (section 710-1060) is made a class B felony; (2) false swearing in official matters (section 710-1061) is made a class C felony; (3) false swearing (section 710-1062) is made a misdemeanor; (4) intimidating a witness (section 710-1071) is made a class B felony; (5) tampering with a witness (section 710-1072) is made a class C felony; (6) retaliating against a witness (section 710-1072.2) is made a class B felony; (7) retaliating against a juror (section 710-1075.5) is made a class B felony; and (8) tampering with physical evidence (section 710-1076) is made a class C felony.

To add sections 710-A (obstruction of criminal investigations), 710-B (tampering with a government record in the first degree), 710-1060 (perjury), 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), and 710-1076

(tampering with physical evidence), Hawaii Revised Statutes, to those felonies that may be initiated by information charging.

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

MEANS:

Add three new sections to part II of chapter 710 and amend sections 706-606.5(1), 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), and 806-83(a) and (b), Hawaii Revised Statutes.

JUSTIFICATION:

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.

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 these charges, information charging will become an even greater asset to the criminal justice system in Hawaii in the years to come. The ability to use information

charging for these felonies will save significant judicial, prosecutorial, and police resources. 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.

Impact on the public: The stronger penalties for the offenses against public administration will provide greater deterrence 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.

Impact on the department and other agencies: 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.

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.

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.