

**TESTIMONY OF
THE DEPARTMENT OF THE ATTORNEY GENERAL
TWENTY-FIFTH LEGISLATURE, 2010**

ON THE FOLLOWING MEASURE:

H.B. NO. 840, RELATING TO CHARGING BY WRITTEN INFORMATION.

BEFORE THE:

HOUSE COMMITTEE ON JUDICIARY

DATE: Tuesday, February 23, 2010 **TIME:** 2:00 p.m.

LOCATION: State Capitol, Room 325

TESTIFIER(S): Mark J. Bennett, Attorney General, or
Lance M. Goto, Deputy Attorney General

Chair Karamatsu and Members of the Committee:

The Attorney General strongly supports this bill.

This is one of only five bills in the 2010 legislative package of the Hawaii Law Enforcement Coalition. The Coalition is composed of the Chiefs of Police of all four counties, the Prosecuting Attorneys of all four counties, the Attorney General, and the United States Attorney for the District of Hawaii. Every bill in the Coalition's legislative package has the unanimous support of every Coalition member.

This bill will amend section 806-83, Hawaii Revised Statutes, to add the following three felony offenses to the list of felonies that may be charged by information: unauthorized entry in a dwelling, unauthorized possession of confidential personal information, and methamphetamine trafficking in the second degree.

Act 62, Session Laws of Hawaii 2004, authorized criminal charges to be initiated by information charging for certain class B and C felonies, which were listed in section 806-83, including promoting a dangerous drug in the second degree, a class B felony. When Act 62 was passed, 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 targeted the particular dangerous drug methamphetamine and set it apart from the other dangerous drugs by creating 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 the new statutory section.

Clearly, the intent of the Legislature, through Acts 62 and 44, 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. It appears that the new methamphetamine offenses were accidentally omitted from 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 allow class B felonies involving drugs, including methamphetamine, to be initiated by information charging. Because numerous class B felony offenses of methamphetamine trafficking in the second degree are charged under section 712-1240.8, Hawaii Revised Statutes, the ability to use information charging for these class B felonies will save significant judicial, prosecutorial, and police resources.

Regarding sections 708-812.6 and 708-839.55, Hawaii Revised Statutes, the class C felony offenses of unauthorized entry in a dwelling and unauthorized possession of confidential personal information did not exist 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. In light of 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 result in significant savings of time and resources.

The impact of information charging can be seen in the Final Report of the Department of the Prosecuting Attorney, City and County of Honolulu, on Information Charging, submitted to the Twenty-Fourth Legislature, 2008, pursuant to Act 62, Section 4, Session Laws of Hawaii 2004. The report included the following statistics for the period from May 10, 2004 to and including November 30, 2007:

- (1) 2188 cases conferred/received for Information Charging;
- (2) 1995 cases were processed via Information Charging (sent to District Court for review);
- (3) Witnesses Saved by Information Charging:
 - (a) 3932 HPD officers would have been called to testify at grand jury or preliminary hearing;
 - (b) 998 HPD personnel (criminalists, fingerprint experts, etc) would have been called at grand jury or preliminary hearing;
 - (c) 2972 civilian victims/witnesses would have been called to testify at grand jury or preliminary hearing.

With the inclusion of the above offenses, 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 going 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.

The Department respectfully requests passage of this measure.

DEPARTMENT OF THE PROSECUTING ATTORNEY
CITY AND COUNTY OF HONOLULU

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PETER B. CARLISLE
PROSECUTING ATTORNEY



DOUGLAS S. CHIN
FIRST DEPUTY
PROSECUTING ATTORNEY

THE HONORABLE JON RIKI KARAMATSU, CHAIR
HOUSE JUDICIARY COMMITTEE
Twenty-fifth State Legislature
Regular Session of 2010
State of Hawai'i

February 23, 2010

RE: H.B. 840; RELATING TO CHARGING BY WRITTEN INFORMATION.

Chair Karamatsu and members of the House Committee on Judiciary, the Department of the Prosecuting Attorney submits the following testimony in support of H.B. 840.

The purpose of this bill is to amend Hawaii Revised Statutes (HRS) section 806-83 to add three felonies (Unauthorized Entry In a Dwelling, Unauthorized Possession of Confidential Personal Information and Methamphetamine Trafficking in the Second Degree) to the list of felonies which may be charged via information.

Information charging was instituted in 2004 to streamline the criminal justice system by allowing the charging of certain felonies by the submission of documents setting forth probable cause to a judge rather than requiring witnesses to come to court to testify. Use of information charging has spared numerous witnesses the necessity of having to appear before a grand jury or

at a preliminary hearing. In these tight fiscal times, it is important to also note that information charging has eliminated the need to pay witness fees for these witnesses and alleviated the need to have police officers waiting down at court to testify, thus sparing police resources and enhancing community safety. Information charging has proven to be a notable success; it has saved the state money, the time of citizens and police resources.

The three felony offenses being added, Unauthorized Entry In a Dwelling (created in 2006), Unauthorized Possession of Confidential Information (created in 2006) and Methamphetamine Trafficking in the Second Degree (created in 2006) were all created after the institution of information charging in 2004 and thus were not included in the original list of offenses eligible for information charging. As these offenses are similar to felony offenses currently eligible for information charging, we see no reason why these offenses should not be added to the list of information charging offenses.

For example, last year we had 19 Unauthorized Entries In a Dwelling (UED) cases which (in addition to police witnesses) required the homeowner to come to court simply to testify they live at the home and that they did not give the suspect permission to enter their home; offenses similar to UED such as Unauthorized Entry into a Motor Vehicle and Burglary in the First and Second Degree which require the owner of the motor vehicle or premises to testify that they did not give permission to the suspect to enter their premises or car are currently on the list of offenses eligible for information charging.

And last year our department had 86 cases of Unauthorized Possession of Confidential

Information (UCPCI) which (in addition to police witnesses) required victims to come to court just to testify that the identity information was theirs and that they did not give the suspect permission to possess their information. As this offense is similar to Identity Theft in the Third Degree which covers the transmission of personal information with the intent to commit Theft in the Third or Fourth Degree, it seems illogical that Identity Theft in the Third Degree would be information charging eligible but UCPCI is not.

As for Methamphetamine Trafficking in the Second Degree, we had 32 cases in 2009 which required police officers and criminalists to come to court to testify that the suspect knowingly distributed methamphetamine in any amount. Since other drug offenses are currently eligible for information charging, such as Promoting a Dangerous Drug in the Second Degree and Promoting a Harmful Drug in the Second Degree can also require testimony of the knowing distribution of illegal drugs, we cannot see any reason to exclude Methamphetamine Trafficking in the Second Degree in the list of offenses eligible for information charging.

We believe that the addition of these three offenses to the list of offenses eligible for information charging will save time, money and resources without any negative affects. For these reasons, we strongly support the passage of H.B. 840 and thank you for this opportunity to testify.

William P. Kenoi
Mayor



William T. Takaba
Managing Director

Walter K.M. Lau
Deputy Managing Director

County of Hawai'i Office of the Mayor

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Testimony In Support of HB 840 Relating to Charging By Written Information

Hearing before House Judiciary Committee
February 23, 2010
2:00 p.m.
House Conference Room 325

Submitted by Jay T. Kimura, Prosecuting Attorney

TO: Chair Riki Karamatsu and Committee Members:

We support House Bill No. 840, Information Charging – Adding Offenses of Unauthorized Entry into Dwelling; Unauthorized Possession of Confidential Personal Information; Methamphetamine Trafficking Second Degree.

The Office of the Prosecuting Attorney fully endorses the proposed amendment to the Hawai'i Revised Statutes, "HRS", Section 806-83 to allow charging of three offenses that were created after the information charging law went into effect.

Information charging was instituted in 2004 to streamline the criminal justice system by allowing the charging of these felonies by submitting documents setting forth probable cause to a judge, rather than requiring witnesses to come to court to testify. Use of information charging has spared numerous witnesses the necessity of having to appear before a grand jury or at a preliminary hearing. In these tight fiscal times, it is important to note that information charging has eliminated the need to pay witness fees for these witnesses and alleviated the need to have police officers waiting at court to testify, thus sparing police resources and enhancing community safety.

Three felonies (Unauthorized Entry in a Dwelling, Unauthorized Possession of Confidential Personal Information, and Methamphetamine Trafficking in the Second Degree) are being added by this bill. These offenses were created after the information charging statutes were passed, so they were not included in the original list of offenses. They are similar to offenses currently on the list of felonies eligible for information charging so there is no reason they should not be included.

"The impact of information charging on the judicial system has been dramatic," Honolulu Prosecuting Attorney Peter Carlisle said. The cost saving for the courts, police and private citizens and their employers has been enormous. Also significant is the emotional relief,

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reduction of stress, and time saved by civilian victims and witnesses who were spared from going to court to testify. Information charging has proved to be an impressively successful innovation in Hawaii's criminal justice system."

Defendants are protected under the current law because any clearly exculpatory evidence must be presented by the prosecutor to the judge determining probable cause of the information charging pleadings. Section 806-84(c), HRS. In cases such as Unauthorized Entry into Dwelling and Unauthorized Possession or Unauthorized Possession of Confidential Personal Information, the prosecutor would include information establishing defendant's claim that he had "consent." Claims that evidence was illegally seized in Methamphetamine Trafficking Offenses are preserved by the defendant under the current law as well.

For the reasons stated, the proposed change in the law will support fair and effective use of resources of government, victims and witnesses, while protecting the rights of the defendant. Thank you for considering our recommendation to adopt this bill.

POLICE DEPARTMENT
CITY AND COUNTY OF HONOLULU

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RANDAL K. MACADANGDANG
DEPUTY CHIEFS

OUR REFERENCE SN-NTK

February 23, 2010

The Honorable Jon Riki Karamatsu, Chair
and Members
Committee on Judiciary
House of Representatives
State Capitol
Honolulu, Hawaii 96813

Dear Chair Karamatsu and Members:

Subject: House Bill No. 840, Relating to Charging by Written Information

I am Sean C. Naito, Captain of the Criminal Investigation Division of the Honolulu Police Department, City and County of Honolulu.

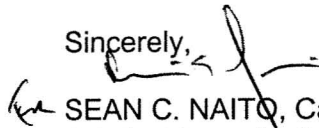
The Honolulu Police Department supports House Bill No. 840, Relating to Charging by Written Information. Passage of this bill will increase the number of felony offenses that may be initiated by information charging. Information charging saves judicial, prosecutorial, and police resources. More importantly, information charging provides significant benefits to crime victims and witnesses by sparing them the necessity of appearing before a grand jury or at a preliminary hearing. This also alleviates the need for police witnesses to appear, thus keeping them on duty to serve and protect the community.

Using information charging for the additional felony offenses will increase the efficiency and effectiveness of our criminal justice system.

The Honolulu Police Department urges you to support House Bill No. 840, Relating to Charging by Written Information.

Thank you for the opportunity to testify.

Sincerely,


SEAN C. NAITO, Captain
Criminal Investigation Division

APPROVED:


FOR LOUIS M. KEALOHA
Chief of Police

William P. Kenoi
Mayor



Harry S. Kubojiri
Police Chief

Paul K. Ferreira
Deputy Police Chief

County of Hawai`i

POLICE DEPARTMENT

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February 22, 2010

The Honorable Jon Riki Karamatsu
Chair and Members
Committee on Judiciary
State Capitol
415 South Beretania Street, Conference Room 325
Honolulu, Hawai'i 96813

Re: HOUSE BILL 840, RELATING TO CHARGING BY WRITTEN INFORMATION

Dear Chairman Karamatsu and Members:

The Hawai'i Police Department strongly supports the passage of House Bill No. 840.

The purpose of this bill is to amend Hawai'i Revised Statutes (HRS) Section 806-83 by adding three additional felonies - Unauthorized Entry In a Dwelling, Unauthorized Possession of Confidential Personal Information and Methamphetamine Trafficking in the Second Degree - to the existing list of felonies which can be charged through written information. These felonies became law after the 2004 enactment of information charging and are consistent with felony offenses currently charged through information charging.

Since its inception in 2004, Information charging has benefited the Hawai'i Police Department and our island we serve by allowing our officers to remain on the job vs. being summoned to court for probable cause court hearings. Charging by written information allows the charging of certain felonies through the submission of documents setting forth probable cause to a judge rather than requiring police officers to come to court to testify. This law has eased the burden on our limited police resources and certainly saved time and money.

For these reasons, we urge this committee to support this legislation. Thank you for allowing the Hawai'i Police Department to testify on H.B. No. 840.

Sincerely,


HARRY S. KUBOJIRI
POLICE CHIEF