

Honolulu, Hawaii

April 29 , 2016

RE: H.B. No. 2561  
H.D. 1  
S.D. 1  
C.D. 1

Honorable Joseph M. Souki  
Speaker, House of Representatives  
Twenty-Eighth State Legislature  
Regular Session of 2016  
State of Hawaii

Honorable Ronald D. Kouchi  
President of the Senate  
Twenty-Eighth State Legislature  
Regular Session of 2016  
State of Hawaii

Sirs:

Your Committee on Conference on the disagreeing vote of the House of Representatives to the amendments proposed by the Senate in H.B. No. 2561, H.D. 1, S.D. 1, entitled:

"A BILL FOR AN ACT RELATING TO THE ADMINISTRATION OF JUSTICE,"  
having met, and after full and free discussion, has agreed to recommend and does recommend to the respective Houses the final passage of this bill in an amended form.

The purpose of this measure is to implement recommendations made by the Penal Code Review Committee. Specifically, this measure amends various chapters of the Hawaii Penal Code and makes conforming amendments to several related statutes outside of the Hawaii Penal Code.

Your Committee on Conference wishes to strongly emphasize that the value of this measure in reforming the Hawaii Penal Code and related other statutes must be considered in its entirety. The measure reflects the majority consensus recommendations of the Penal Code Review Committee established pursuant to House Concurrent Resolution No. 155, S.D.1 (2015), which was composed of judges,

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prosecutors, public defenders, members of the defense bar, crime victims' advocates, legislators, law enforcement officials, the director of the Department of Public Safety, a representative from the Office of Hawaiian Affairs, and community advocates from a variety of backgrounds. The Review Committee also solicited input from relevant stakeholders. As the executive summary of the Penal Code Review Committee report notes, its work "drew on the collective experience of its diverse membership and, at the same time, attempted to see what current criminal justice research could teach."

The work of the Penal Code Review Committee ultimately recommended changes to fifty existing statutes and adoption of four new statutes, culminating in a total of eighty-four proposals. Key proposals included amendments aimed at making forensic examinations of defendants more efficient and timely, and ensuring that, regardless of whether a pre-sentence diagnosis is performed, reasonable efforts are made to inform victims and their families of the right to be present and heard at sentencing, particularly in felony cases. The measure also includes a new section clearly establishing the priority for payments that a defendant is ordered to make, including restitution, crime victims compensation fee, probation services fee, human trafficking victims services fees, DNA analysis monetary assessment, and fines. This measure additionally affords new statutory authority for a court to add, as a condition for probation under certain circumstances, that a defendant submit to searches by a probation officer of his or her person, residence, vehicle, or other sites and property under the person's control, and to sign a waiver of extradition and pay extradition costs as the court may determine.

Your Committee on Conference has concluded that it is necessary to further strengthen the habitual property crime statute, section 708-803, Hawaii Revised Statutes (HRS). While it is not desirable to incarcerate an individual for stealing items worth \$300, the current felony theft threshold, especially when reminded of the fact that each day of incarceration costs Hawaii taxpayers \$137 per incarcerated individual, it is important to properly penalize those individuals who have made a career of thievery. Accordingly, the required number of prior convictions needed in order for an individual to be charged as a habitual property crime perpetrator has been reduced by one conviction, to either two felonies, two misdemeanors, a felony and a misdemeanor, a felony and a petty misdemeanor, a misdemeanor and a petty misdemeanor, or three petty misdemeanors. For the first time, petty misdemeanor theft will be included under the habitual threat statute. Along with the



amendment based on the Penal Code Review Committee's recommendation to double the length of time from five years to ten years that a conviction can qualify one for habitual theft status, these amendments will hold habitual thieves more accountable.

Your Committee believes that the amendments to the habitual property crime statute address concerns of business owners that by raising the threshold value of items stolen, criminal activity will be encouraged. To the contrary, as concluded in a recent Pew Charitable Trusts issue brief that analyzed the possible relationship between increased felony theft thresholds and property crime rates in thirty states between 2001 and 2011, raising felony theft thresholds has had no impact on overall property crime. Further, states that have increased their thresholds have reported roughly the same average decrease in crime as states that did not and the amount of a state's felony theft threshold has not correlated with its property crime and theft rates.

Your Committee on Conference has amended this measure by:

- (1) Clarifying that the prohibition against suspending the right to bail when the defendant raises a mental health defense or unfitness to proceed does not apply to defendants who are under an order of commitment to a hospital for mental health purposes;
- (2) Reducing by one the number of qualifying convictions required to meet the habitual property crime perpetrator status and allowing any offense committed under chapter 708, HRS, to qualify;
- (3) Referencing the definition of an offense "committed in the presence of a minor" from section 706-606.4, HRS, in the abuse of a family or household member statute;
- (4) Making technical, nonsubstantive amendments for clarity, consistency, and style; and
- (5) Making this measure take effect on July 1, 2016.

Finally, your Committee on Conference wishes to emphasize that it is the Legislature's duty to review and propose statutory revisions and that, as a whole, this measure represents the Legislature's current comprehensive policy position on revision to the Hawaii Penal Code and ancillary related statutes in other chapters of the HRS. While your Committee is aware and expects that



further revisions will be debated and considered in future years, your Committee strongly urges that this measure be enacted to provide broad-ranging substantive reform, fairness, and efficiency to the administration of justice in our State.

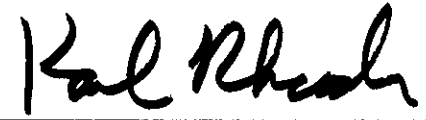
As affirmed by the record of votes of the managers of your Committee on Conference that is attached to this report, your Committee on Conference is in accord with the intent and purpose of H.B. No. 2561, H.D. 1, S.D. 1, as amended herein, and recommends that it pass Final Reading in the form attached hereto as H.B. No. 2561, H.D. 1, S.D. 1, C.D. 1.

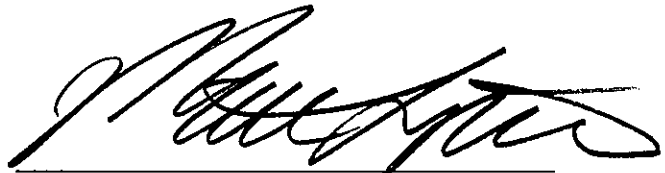
Respectfully submitted on behalf  
of the managers:

ON THE PART OF THE SENATE

ON THE PART OF THE HOUSE

  
GILBERT S.C. KEITH-AGARAN,  
Chair

  
KARL RHOADS, Co-Chair

  
MATTHEW S. LOPRESTI, Co-Chair



**Hawaii State Legislature**  
**Record of Votes of a**  
**Conference Committee**

CCR 138-16

Bill / Concurrent Resolution No.: <b>HB 2561, HD 1, SD 1</b>	Date/Time: 04/29/16 @ 2:43 p.m.
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The recommendation of the House and Senate managers is to pass with amendments (CD).

The Committee is reconsidering its previous decision.

<input type="checkbox"/> The recommendation of the Senate Manager(s) is to AGREE to the House amendments made to the Senate Measure	<input type="checkbox"/> The recommendation of the House Manager(s) is to AGREE to the Senate amendments made to the House Measure.
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Senate Managers	A	WR	N	E	House Managers	A	WR	N	E
KEITH-AGARAN, Gilbert S.C., Chr.	✓				RHOADS, Karl, Co-Chr.	✓			
KAHELE, Kaiali'i	✓				LOPRESTI, Matthew S., Co-Chr.	✓			
SHIMABUKURO, Maile S.L.	✓				SAN BUENAVENTURA, Joy A.	✓			
					WARD, Gene	✓			
<b>TOTAL</b>	3	0	0	0	<b>TOTAL</b>	4	0	0	0

A = Aye                      WR = Aye with Reservations                      N = Nay                      E = Excused

Senate Recommendation is: <input checked="" type="checkbox"/> Adopted <input type="checkbox"/> Not Adopted	House Recommendation is: <input checked="" type="checkbox"/> Adopted <input type="checkbox"/> Not Adopted
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Senate Lead Chair's or Designee's Signature: 	House Lead Chair's or Designee's Signature: 
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**Distribution:**                      **Original**                      **Yellow**                      **Pink**                      **Goldenrod**  
 File with Conference Committee Report                      House Clerk's Office                      Senate Clerk's Office                      Drafting Agency