

STAND. COM. REP. NO.

3449

Honolulu, Hawaii

APR 08 2016

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

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

Sir:

Your Committee on Judiciary and Labor, to which was referred
H.B. No. 2561, H.D. 1, entitled:

"A BILL FOR AN ACT RELATING TO THE ADMINISTRATION OF
JUSTICE,"

begs leave to report as follows:

The purpose and intent of this measure is to implement
recommendations made by the Penal Code Review Committee convened
pursuant to House Concurrent Resolution No. 155, S.D. 1 (2015).

Specifically, this measure amends various chapters of the
Hawaii Penal Code and makes conforming and other amendments to
related statutes outside of the Hawaii Penal Code.

Your Committee received testimony in support of this measure
from the Crime Victim Compensation Commission, the Community
Alliance on Prisons, and one individual. The Department of Health
and the Sex Abuse Treatment Center submitted testimony in support
of part IV of the measure.

The Department of the Attorney General, the Department of the
Prosecuting Attorney of the City and County of Honolulu, the
Honolulu Police Department, and the Office of the Prosecuting
Attorney of the County of Kauai submitted testimony supporting
parts of the measure, but opposing other parts.

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Your Committee received testimony in opposition to this measure from the Chamber of Commerce Hawaii, the Chinatown Merchants Association, and the Hawaii Food Industry Association. Retail Merchants of Hawaii and ABC Stores submitted testimony in opposition to a specific part of the measure.

Your Committee received comments on this measure from the Judiciary.

Your Committee finds that this measure reflects the recommendations of the Penal Code Review Committee, which was established pursuant to House Concurrent Resolution No. 155, S.D. 1 (2015). The Penal Code Review Committee was composed of judges, lawyers, legislators, law enforcement officials, and members of the public. The Committee carefully reviewed the Hawaii Penal Code, as well as other related statutes, and made eighty-four recommendations that were included in the current measure, which comprises more than seventy sections.

The Penal Code Review Committee submitted a report of its findings and recommendations to the Legislature on December 31, 2015. The report contains detailed analysis and rationale for each of its recommendations. Your Committee incorporates the Penal Code Review Committee's report by reference in this committee report. The Report of the Penal Code Review Committee may be accessed at:
[http://www.courts.state.hi.us/docs/news and reports docs/2015 PENA L CODE REVIEW REPORT-FINAL-12-30-15.pdf](http://www.courts.state.hi.us/docs/news_and_reports_docs/2015_PENAL_CODE_REVIEW_REPORT-FINAL-12-30-15.pdf).

Your Committee provided for advance public comment a proposed S.D.1, which amended this measure by:

- (1) Including new provisions in section 70 of the measure concerning applicability of the provisions in sections 54, 55, and 56 of the measure, to allow for retroactive effect in certain circumstances and to avoid anomalous or disproportionate sentencing for persons currently being adjudicated for crimes involving methamphetamine;
- (2) Based upon testimony submitted at your Committee's hearing on the companion measure, S.B. No. 2964, adding language to section 61 of this measure to preclude a court from entering an order modifying the statutorily prescribed monthly deduction of moneys owed for victim restitution;



- (3) Changing the effective date to January 7, 2059, to facilitate further discussion on the measure; and
- (4) Making technical non-substantive changes for purposes of clarity, consistency, and style.

After full and fair discussion at a public hearing for the proposed S.D.1, your Committee has further amended this measure by:

- (1) In section 4 of the measure concerning examination of a defendant with respect to physical or mental disorders, based on testimony received from the Deputy Chief Judge of the Family Court of the First Circuit, providing that juvenile records may be made available to the prosecuting attorney and counsel for a defendant only if constitutionally required;
- (2) Based on testimony provided by the Department of the Prosecuting Attorney of the City and County of Honolulu, and with oral concurrence at the hearing by the Chair of the Penal Code Review Committee, further expanding the scope of section 708-803, Hawaii Revised Statutes, in section 36 of the measure concerning habitual property crime, by adding convictions for petty misdemeanor theft under section 708-833, Hawaii Revised Statutes, to two new combinations of crimes within the definition of "habitual property crime perpetrator."

With respect to property crime generally, your Committee wishes to note that an issue brief from the Pew Charitable Trusts, dated February 23, 2016, analyzed the possible relationship between increased felony theft thresholds and property crime rates in thirty states between 2001 and 2011. The issue brief stated three important conclusions:

- (1) Raising felony theft thresholds has no impact on overall property crime;
- (2) States that increased their thresholds reported roughly the same average decrease in crime as states that did not; and
- (3) The amount of a state's felony theft threshold does not correlate with its property crime and theft rates.



Your Committee notes that this measure raises the class C felony theft threshold from \$300 to \$750, whereas states analyzed in the issue brief from Pew Charitable Trusts had felony theft thresholds as high as \$2,000 (South Carolina, Colorado) or even \$2,500 (Texas). The issue brief may be accessed at: http://www.pewtrusts.org/~media/assets/2016/02/the_effects_of_changing_state_theft_penalties.pdf

As affirmed by the record of votes of the members of your Committee on Judiciary and Labor that is attached to this report, your Committee is in accord with the intent and purpose of H.B. No. 2561, H.D. 1, as amended herein, and recommends that it pass Second Reading in the form attached hereto as H.B. No. 2561, H.D. 1, S.D. 1, and be placed on the calendar for Third Reading.

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


GILBERT S.C. KEITH-AGARAN, Chair



