

STAND. COM. REP. NO.

2674

Honolulu, Hawaii

MAR 04 2016

RE: S.B. No. 2964  
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  
S.B. No. 2964 entitled:

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

begs leave to report as follows:

The purpose of this measure is to implement recommendations  
made by the Penal Code Review Committee 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 amendments to several  
related sections of the Hawaii Revised Statutes outside the penal  
code.

The Department of Health, Ho'omana Pono, LLC, and one  
individual submitted testimony in support of this measure.

The Department of the Attorney General, the Crime Victim  
Compensation Commission, Department of the Prosecuting Attorney of  
the City and County of Honolulu, Honolulu Police Department,  
Office of the Prosecuting Attorney of the County of Kauai, and the  
Sex Abuse Treatment Center submitted testimony in support of this  
measure with amendments.

The White Collar Crime Unit of the Department of the  
Prosecuting Attorney of the City and County of Honolulu submitted  
testimony in opposition to a portion of this measure.

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Your Committee finds that this measure reflects the significant and thorough work of the Penal Code Review Committee, which was established pursuant to House Concurrent Resolution No. 155, S.D. 1 (2015). After evaluating the Hawaii Penal Code, as well as other related statutes, the Penal Code Review Committee made eighty-four recommendations that were adapted into the current measure, which is composed of more than seventy sections.

The Report of the Penal Code Review Committee was submitted to the Legislature on December 31, 2015, and contains analysis and rationale for each recommendation. It is your Committee's intent that the Report of the Penal Code Review Committee should be considered as an attachment to this committee report. A copy of the Report of the Penal Code Review Committee is available 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 notes that the Penal Code Review Committee, as appointed by the Chief Justice, consisted of a diverse and balanced body of members representing different agencies from the law enforcement community, the defense bar, trial and appellate court judges, one Supreme Court justice, crime victims' rights organizations, the Department of Public Safety, and the Office of Hawaiian Affairs, among others. Although robust discussion on certain proposed changes to the Hawaii Penal Code did occasionally result in minority opinions, your Committee wishes to emphasize that in many instances counter-balancing proposals were explored and incorporated into the final report to the Legislature. Thus, the recommendations of the Penal Code Review Committee, as reflected in this measure, collectively represent the majority consensus view expressed by this diverse panel, taking into account the experiences of the members who work in or interact with the criminal justice system.

Your Committee also notes concerns expressed by the Department of the Prosecuting Attorney, City and County of Honolulu, with regard to the repeal of section 708-893(1)(a), Hawaii Revised Statutes, concerning intentional use of a computer to obtain control over the property of a victim to commit theft. Your Committee wishes to note, however, that the Penal Code Review Committee carefully considered the issues presented, and decided that the felony penalties for first and second degree theft are sufficient without the enhancement provided by this section of the statute, and that, without repeal, the prevalence of smartphones



in today's society may result in a rash of unduly harsh class A felony charges.

Your Committee further notes concerns expressed by various law enforcement stakeholders that raising the felony threshold amounts for theft in sections 708-831, 708-832, and 708-833, Hawaii Revised Statutes, may not be prudent. Your Committee finds, however, that the Legislature passed S.B. No. 569, C.D. 1 (2015), amending section 708-831, Hawaii Revised Statutes, in the same manner as proposed in this measure, that the felony theft threshold amount has not been revised in the past three decades, and that the other amendments proposed to other statutes in this measure reflect proportional or conforming increased thresholds. Moreover, the Penal Code Review Committee noted that the increased threshold amounts for theft in this measure are counter-balanced by an amendment to the habitual property crime statute that broadens the retrospective time frame for multiple offenses from five years to ten years, thereby providing law enforcement with greater opportunity to charge repeat property crime offenders with a class C felony.

Your Committee also notes the concern expressed by the Department of the Prosecuting Attorney, City and County of Honolulu, that habitual property crime does not pertain to lower level petty misdemeanor offenses, but to the extent that neither the Penal Code Review Committee nor this measure addresses petty misdemeanor property crime, that topic might be more suitable for a separate discussion and future legislation.

Finally, your Committee expresses concern that the revised penalties resulting from amendments to the statutes covering methamphetamine trafficking may be applied anomalously. In some instances, persons still in the course of prosecution at the time of enactment of this measure would be subject to the harsher penalties in effect at the time of the first charging of the offense. Your Committee notes the possibility of confusion or litigation arising from this situation, and will continue to seek input from interested stakeholders concerning a revision to the effective date of this measure so as to not result in disproportionate or unjust penalties for such persons.

Your Committee has amended this measure by:



- (1) Providing that sections 54, 55, and 56 of this Act shall apply to offenses committed before the effective date of this Act, under certain conditions;
- (2) Changing the effective date to January 7, 2059, to facilitate further discussion on the measure; and
- (3) Making technical nonsubstantive changes for the purposes of clarity, consistency, and style.

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 S.B. No. 2964, as amended herein, and recommends that it pass Second Reading in the form attached hereto as S.B. No. 2964, 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



The Senate  
 Twenty-Eighth Legislature  
 State of Hawai'i

**Record of Votes**  
**Committee on Judiciary and Labor**  
**JDL**

Bill / Resolution No.:* <i>SB 2964</i>	Committee Referral: <i>JDL</i>	Date: <i>2/23/16</i>		
<input type="checkbox"/> The Committee is reconsidering its previous decision on this measure. If so, then the previous decision was to: _____				
The Recommendation is: <input type="checkbox"/> Pass, unamended 2312 <input checked="" type="checkbox"/> Pass, with amendments 2311 <input type="checkbox"/> Hold 2310 <input type="checkbox"/> Recommit 2313				
Members	Aye	Aye (WR)	Nay	Excused
KEITH-AGARAN, Gilbert S.C. (C)	/			
SHIMABUKURO, Maile S.L. (VC)				/
GABBARD, Mike				/
KAHELE, Kaiali'i	/			
KIM, Donna Mercado	/			
THIELEN, Laura H.		/		
SLOM, Sam				/
<b>TOTAL</b>	<i>3</i>	<i>1</i>		<i>3</i>
Recommendation: <input checked="" type="checkbox"/> Adopted <input type="checkbox"/> Not Adopted				
Chair's or Designee's Signature: <i>Rachel Hovell</i>				
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\*Only one measure per Record of Votes