



**TESTIMONY OF  
THE DEPARTMENT OF THE ATTORNEY GENERAL  
TWENTY-NINTH LEGISLATURE, 2017**

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**ON THE FOLLOWING MEASURE:**

S.B. NO. 339, S.D. 1, RELATING TO INFORMATION CHARGING.

**BEFORE THE:**

HOUSE COMMITTEE ON JUDICIARY

**DATE:** Tuesday, April 4, 2017

**TIME:** 2:00 p.m.

**LOCATION:** State Capitol, Room 325

**TESTIFIER(S):** Douglas S. Chin, Attorney General, or  
Lance M. Goto, Deputy Attorney General

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Chair Nishimoto and Members of the Committee:

The Department of the Attorney General supports this bill.

The purpose of this bill is to amend section 806-83, Hawaii Revised Statutes (HRS), to authorize all class B and C felony charges to be instituted by written information, subject to specified exceptions.

Section 806-83, HRS, currently enumerates every class B and C felony charge that can be instituted by written information. Most class B and C felony offenses are included in the listings. There are ninety-four C felonies and fourteen B felonies that are listed. Every time a new offense is created that should be chargeable by written information, section 806-83 must be amended to include that new offense.

Instead of specifying the many offenses that may be charged by written information, this bill would amend section 806-83 to allow all B and C felonies to be charged by written information, except for certain specified offenses, including eighteen C felonies and six B felonies. The list of enumerated offenses is substantially reduced. Those specified offenses excluded from information charging include violent crimes, such as physical assaults, sexual assaults, and robberies, and also offenses in which the determination of probable cause for the charge would likely depend heavily upon the credibility of a victim or witness.

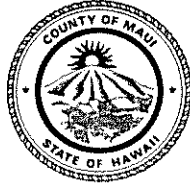
This bill will amend section 806-83 to make it more efficient and effective. The amendments are consistent with the intent of the amendment to the State Constitution

to permit felony charges by information. Two of the main reasons for the constitutional amendment were: (1) to address public safety concerns by putting on-duty police officers back on the street instead of having them wait in the courthouse to testify at a grand jury or preliminary hearing, and (2) to reduce police overtime expenses for having off-duty officers report to court to testify for a grand jury or preliminary hearing.

With this bill, criminal justice agencies will be able to more readily identify charges that can be instituted by written information. And legislation that creates new felony offenses will generally not need to include amendments to section 806-83, HRS. When a new B or C felony offense is created, it could be charged by written information, unless specifically excluded under section 806-83.

The Department respectfully requests the Committee pass this bill.

ALAN M. ARAKAWA  
Mayor



JOHN D. KIM  
Prosecuting Attorney  
ROBERT D. RIVERA  
First Deputy Prosecuting Attorney

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TESTIMONY  
ON  
SB 339, SD 1 - RELATING TO INFORMATION CHARGING

April 4, 2017

The Honorable Scott Y. Nishimoto  
Chair  
The Honorable Joy A. San Buenaventura  
Vice Chair  
and Members  
House Committee on Judiciary

Chair Nishimoto, Vice Chair San Buenaventura, and Members of the Committee:

The Department of the Prosecuting Attorney, County of Maui strongly supports SB 339, SD 1,. This measure will make allow all class B and C charges to be instituted by information charging unless specifically excluded. This bill mirrors the bill that was introduced on behalf of the Law Enforcement Coalition.

Important parts of the intent to enact the amendment to the Hawaii State Constitution to permit felony charges by information were to put on-duty police officers back on the street instead of having them wait in the courthouse to testify before the grand jury, and to reduce overtime expenses for having off-duty officers report to the courthouse to testify before the grand jury. Thereafter, HRS § 806-83, enacted after a committee determined which charges should be available for information charging. Those class B and C felonies not listed were intended to be violent crimes, including sexual assault.

HRS § 806-83 is exclusive, that is, all class B and C felonies are not subject to information charging, unless they are specifically listed. The problem is that as new felonies are

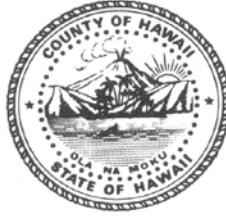
enacted, the need to list those felonies in HRS § 806-83 is often overlooked. Thus, the resulting situation is that there is a specific problem in our community requiring a felony offense to be created, and the felony is enacted, but it is not listed in HRS § 806-83. Charges under that offense then have to go before the grand jury or preliminary hearing if the defendant is in custody. This results in police not out on the streets or the need to pay overtime for officers to come in and testify ... the very situations the constitutional amendment sought to avoid. Over the years, there are several offenses that are not listed which were either missed when HRS § 806-83 was first enacted, or because they were not added to the list when enacted: Theft of Copper, Prohibited Acts Related to Obtaining Controlled Substance Prescriptions, Welfare Fraud and Unauthorized Entry in a Dwelling in the First and Second Degrees are some. In the 2016 session alone, there were at least four new or revamped felonies that were not added to the list: Habitual Property Crime, Prostitution by John of Victim of Sex Trafficking, Theft of an Urn, and Resisting an Order to Stop a Motor Vehicle in the First Degree. This bill will correct this problem.

Accordingly, the Department of the Prosecuting Attorney, County of Maui, requests that this measure be PASSED with an amendment correcting the effective date.

Thank you very much for the opportunity to testify.

**MITCHELL D. ROTH**  
PROSECUTING ATTORNEY

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## **OFFICE OF THE PROSECUTING ATTORNEY**

TESTIMONY IN SUPPORT OF SENATE BILL 339, SD1

A BILL FOR AN ACT RELATING TO INFORMATION  
CHARGING

COMMITTEE ON JUDICIARY

Rep. Scott Y. Nishimoto, Chair

Rep. Joy A. San Buenaventura, Vice Chair

Tuesday, April 4, 2017, 2:00 P.M.  
State Capitol, Conference Room 325

Honorable Chair Nishimoto, Vice-Chair San Buenaventura, and Members of the Committee on Judiciary, the Office of the Prosecuting Attorney, County of Hawai'i submits the following testimony in support of Senate Bill No. 339, SD1.

Important parts of the intent to enact the amendment to the Hawai'i State Constitution to permit felony charges by information was to put on-duty police officers back on the street instead of having them wait in the courthouse to testify before the grand jury, and to reduce overtime expenses for having off- duty officers report to the courthouse to testify before grand jury. Thereafter, HRS § 806-83, enacted after a committee determined which charges should be available for information charging. Those class B and C felonies not listed were intended to be the violent crimes, including sexual assault.

The issue with HRS § 806-83 is that it is exclusive, that is, all class B and C felonies are not subject to information charging, unless they are specifically listed. The problem is that as new felonies are enacted, the need to list those felonies in HRS § 806-83 is often overlooked. Thus the resulting situation is that there is a specific problem in our community requiring a felony offense to be created, and the felony is enacted but it is not listed in HRS § 806-83. Charges under that offense then have to go before the grand jury. This results in police not out on the streets or the need to pay overtime for officers to come in and testify...the very situations that constitutional amendment sought to avoid. Over the years, there are several offenses that are not listed which were either missed when HRS § 806-83 was first enacted, or because they were not added to the list when enacted: Theft of Copper, Prohibited Acts Related to Obtaining Controlled Substance Prescriptions, Welfare Fraud and Unauthorized Entry in a Dwelling in the First and Second Degrees are some. In the 2016 session alone, there were at least four new or revamped

felonies that were not added to the list: Habitual Property Crime, Prostitution by John of Victim of Sex Trafficking, Theft of an Urn, and Resisting and Order to Stop a Motor Vehicle in the First Degree. This bill will correct this problem.

For the foregoing reasons, the Office of the Prosecuting Attorney, County of Hawai'i supports the passage of Senate Bill No. 339, SD1. Thank you for the opportunity to testify on this matter.

**Justin F. Kollar**  
Prosecuting Attorney

**Jennifer S. Winn**  
First Deputy

**Amu I. Reali** First Deputy



**Rebecca Vogt Like**  
Second Deputy

**Diana Gausepohl-White**  
Victim/Witness Program Director

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TESTIMONY IN SUPPORT OF SENATE BILL 339, SD 1

RELATING TO INFORMATION CHARGING

COMMITTEE ON JUDICARY

The Honorable Scott Y. Nishimoto, Chair  
The Honorable Joy A. San Buenaventura, Vice Chair  
and Members of the House Committee on Judiciary

Tuesday, April 4, 2017, 2:00 P.M.  
House Conference Room 325

Chair Nishimoto, Vice Chair San Buenaventura, and Members of the Committee:

The Office of the Prosecuting Attorney, County of Kaua'i strongly supports SB 339, SD 1. This measure will allow all class B and C charges to be instituted by information charging unless specifically excluded. This bill mirrors the bill that was introduced on behalf of the Law Enforcement Coalition.

Important parts of the intent to enact the amendment to the Hawaii State Constitution to permit felony charges by information was to put on-duty police officers back on the street instead of having them wait in the courthouse to testify before the grand jury, and to reduce overtime expenses for having off-duty officers report to the courthouse to testify before grand jury. Thereafter, HRS § 806-83, enacted after a committee determined which charges should be available for information charging. Those class B and C felonies not listed were intended to be the violent crimes, including sexual assault.

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offense to be created, and the felony is enacted but it is not listed in HRS § 806-83. Charges under that offense then have to go before the grand jury. This results in police not out on the streets or the need to pay overtime for officers to come in and testify...the very situations that constitutional amendment sought to avoid. Over the years, there are several offenses that are not listed which were either missed when HRS § 806-83 was first enacted, or because they were not added to the list when enacted: Theft of Copper, Prohibited Acts Related to Obtaining Controlled Substance Prescriptions, Welfare Fraud and Unauthorized Entry in a Dwelling in the First and Second Degrees are some. In the 2016 session alone, there were at least four new or revamped felonies that were not added to the list: Habitual Property Crime, Prostitution by John of Victim of Sex Trafficking, Theft of an Urn, and Resisting and Order to Stop a Motor Vehicle in the First Degree. This bill will correct this problem.

The Office of the Prosecuting Attorney, County of Kaua'i requests this measure be PASSED with an amendment correcting the effective date.

Thank you for the opportunity to testify on this matter.



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**THE HONORABLE SCOTT NISHIMOTO, CHAIR  
HOUSE COMMITTEE ON JUDICIARY  
Twenty-Ninth State Legislature  
Regular Session of 2017  
State of Hawai`i**

April 4, 2017

**RE: S.B. 339, S.D. 1; RELATING TO INFORMATION CHARGING.**

Chair Nishimoto, Vice Chair San Buenaventura, and members of the House Committee on Judiciary, the Department of the Prosecuting Attorney of the City & County of Honolulu (“Department”) submits the following testimony in support of S.B. 339, S.D. 1.

S.B. 339, S.D. 1 would amend section 806-83, Hawaii Revised Statutes (“HRS”) to allow most class B and C felony charges to be initiated via written information, excepting certain offenses that would still require preliminary or grand jury proceedings.

The amendments proposed by S.B. 339, S.D. 1 would be consistent with ongoing efforts to streamline our courts and make them more efficient, while also maintaining defendants’ rights and making the criminal justice system less arduous for victims of crime. Of the three methods by which felony charges can be initiated in Hawaii (i.e. grand jury, preliminary hearing or written information), written information is the only method that does not require victims and witnesses to testify twice (i.e. once before charges are instituted and once during trial). Thus, this not only saves a significant amount of time and resources for all parties, but it is generally less taxing on victims and witnesses. To the extent any witnesses are police or other law enforcement officers, written information keeps more on-duty officers on the street—rather than waiting in a courthouse to testify one more time—and saves overtime expenses to bring in off-duty officers.

Written information also maintains defendants’ rights. Similar to preliminary hearings and grand jury proceedings, cases initiated via written information require a determination that probable cause exists, before a defendant can be formally charged with any criminal offenses; written information considered by the judge includes affidavits and other documentary evidence. Whether a case is initiated via grand jury, preliminary hearing or written information, the standard of proof required to find a defendant guilty (or not guilty) of any offense at trial remains the same.

As currently written, HRS §806-83 includes an extensive list of felony offenses that can be initiated via written information, and every year, new felonies are enacted, many of which never seem to consider the possibility of initiation via written information. For example, of the four new felonies established in 2016 (Habitual property crime, Soliciting victim of sex trafficking, Theft of an urn, and Resisting an order to stop a motor vehicle in the first degree), it does not appear that any contemplated the possibility of written information. This is not to say that legislators decided to disallow initiation via written information; it simply appears the matter was never raised or considered, in the myriad of other, substantive issues covered during the legislative process.

Rather than continuing to pile on “low-level” felonies that automatically require the added time, cost and hardship on witnesses involved in preliminary or grand jury hearings, S.B. 339, S.D. 1 would switch the current approach, such that written information would be “the norm” for most class B and C felony offenses, except for those offenses that the Legislature believes would always be so exceptional as to warrant these additional proceedings. It is important to note that, even when written information is permitted, county prosecuting attorneys would retain the option to initiate any felony case via preliminary or grand jury hearing, on a case-by-case basis.

For all of the foregoing reasons, the Department of the Prosecuting Attorney of the City and County of Honolulu supports S.B. 339, S.D. 1. Thank you for the opportunity to testify on this matter.