



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

ON THE FOLLOWING MEASURE:

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

BEFORE THE:

SENATE COMMITTEE ON JUDICIARY AND LABOR

DATE: Tuesday, February 21, 2017 **TIME:** 9:00 a.m.

LOCATION: State Capitol, Room 016

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

Chair Keith-Agaran and Members of the Committee:

The Department of the Attorney General supports this bill with a few conforming amendments.

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 will 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 recommends certain conforming amendments to the law.

Subsection (d), starting on page 12, line 20, should be amended to read as follows:

Criminal charges may be instituted by written information for a felony when the charge is ~~[a charge]~~ under section 329-46 (prohibited acts related to visits to more than one practitioner to obtain controlled substance prescriptions) and the comparable offense under part IV of chapter 712 ~~[as]~~ is a B or C felony offense not enumerated in subsection [(a), (b), or (c)]. (a) or (b).

Part IV of chapter 712 includes drug offenses. Subsection (d) should identify B or C felony drug offenses that can be charged by information. It should specifically refer to B or C felony offenses in order to exclude A felonies, which should not be charged by information. The reference to subsection (c) may be deleted since it does not include any drug offenses and, unlike the proposed exclusive subsections (a) and (b), identifies specific offenses that are chargeable by information.

Proposed paragraph (2) of subsection (e), on page 14, lines 1-2, should be amended to read as follows:

The underlying offense is [an] a B or C felony offense not listed [above] in subsection (a)[,] or (b), or an offense specified in subsection (c)[,] or (d).

The paragraph should specifically refer to B or C felony offenses in order to exclude A felony offenses from information charging. And subsections (a) and (b) should be referred to differently from subsections (c) and (d) because the offenses specified in (a) and (b) are excluded from information charging, while the offenses specified in (d) and (e) are included in the group of offenses that may be charged by information.

The Department respectfully requests the Committee pass this bill with the recommended amendments.

Justin F. Kollar
Prosecuting Attorney

Jennifer S. Winn
First Deputy

Amy L. Eckerl 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

RELATING TO INFORMATION CHARGING

COMMITTEE ON JUDICIARY AND LABOR

Senator Gilbert S.C. Keith-Agaran, Chair
Senator Karl Rhoads, Vice Chair

Tuesday, February 14, 2017, 8:30 A.M.
State Capitol, Conference Room 016

Honorable Chairs Nishihara and Keith-Agaran, Vice-Chair Rhoads, and Committee on Judiciary and Labor. The Office of the Prosecuting Attorney, County of Kaua'i submits the following testimony in support of Senate Bill No. 339.

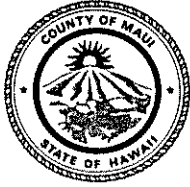
Important parts of the intent to enact the amendment to the Hawaii State Constitution to permit felony charges by information was to put on-duty police officers back on the street instead of having them wait in the courthouse to testify before the grand jury, and to reduce overtime expenses for having 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.

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.

The Department of the Attorney General has some proposed amendments to the bill, and we concur with those proposed amendments.

The Office of the Prosecuting Attorney, County of Kaua'i supports the passage of Senate Bill No. 339. Thank you for the opportunity to testify on this matter.



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TESTIMONY
ON
SB 339 - RELATING TO INFORMATION CHARGING

February 21, 2017

The Honorable Gilbert S.C. Keith-Agaran
Chair
The Honorable Karl Rhoads
Vice Chair
and Members
Senate Committee on Judiciary and Labor

Chair Keith-Agaran, Vice Chair Rhoads, and Members of the Committee:

The Department of the Prosecuting Attorney, County of Maui strongly supports SB 339. This measure will make allow all class B and C charges to be instituted by information charging unless specifically excluded.

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 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 the violent crimes, including sexual assault.

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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 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.

The Department of the Attorney General has some proposed amendments to this bill, and we concur with those proposed amendments.

Accordingly, the Department of the Prosecuting Attorney, County of Maui, requests that this measure be PASSED with the Attorney General's proposed amendments.

Thank you very much for the opportunity to testify.