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THE HONORABLE GILBERT S.C. KEITH-AGARAN, CHAIR
SENATE COMMITTEE ON JUDICIARY AND LABOR
Twenty-Ninth State Legislature
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State of Hawai'i

February 21, 2017

RE: S.B. 339; RELATING TO INFORMATION CHARGING.

Chair Keith-Agaran, Vice-Chair Rhoads and members of the Senate Committee on Judiciary and Labor, the Department of the Prosecuting Attorney of the City & County of Honolulu (“Department”) submits the following testimony in support of S.B. 339, with the amendments proposed by the Department of the Attorney General.

S.B. 339 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—and additionally by the Department of the Attorney General—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 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. Thank you for the opportunity to testify on this matter.