

STAND. COM. REP. NO. 3243

Honolulu, Hawaii

MAR 18 2022

RE: H.B. No. 1541

Honorable Ronald D. Kouchi
President of the Senate
Thirty-First State Legislature
Regular Session of 2022
State of Hawaii

Sir:

Your Committee on Judiciary, to which was referred H.B. No. 1541 entitled:

"A BILL FOR AN ACT RELATING TO CRIMINAL COMPLAINTS,"

begs leave to report as follows:

The purpose and intent of this measure is to clarify the acceptable procedure for initiating criminal complaints to include a signature by the prosecuting officer.

Your Committee received testimony in support of this measure from the Department of the Attorney General, Department of Transportation, Department of the Prosecuting Attorney of the City and County of Honolulu, Office of the Prosecuting Attorney for the County of Kaua'i, Office of the Prosecuting Attorney for the County of Hawai'i, Department of the Prosecuting Attorney for the County of Maui, Hawai'i Police Department, Honolulu Police Department, Hawai'i State Coalition Against Domestic Violence, Mothers Against Drunk Driving Hawaii, Domestic Violence Action Center, and Retail Merchants of Hawaii. Your Committee received testimony in opposition to this measure from the Office of the Public Defender.

Your Committee finds that state courts are struggling with interpreting section 805-1, Hawaii Revised Statutes, as written following the Hawaii Supreme Court's decision. The lack of clarity in a recent Hawaii Supreme Court decision has resulted in inconsistent rulings in trial courts and cases being dismissed, sometimes with prejudice, based on the form of the complaint and



not the merits of the case. In *State v. Thompson* the Supreme Court held that in order to comply with section 805-1, Hawaii Revised Statutes, the underlying complaint must be subscribed under oath by the complainant or made by declaration in lieu of an affidavit in conformity with Hawaii Rules of Penal Procedure Rule 47(d). Your Committee further finds that a survey of the counties indicates that different judges are coming to different conclusions about the sufficiency of District Court complaints under *Thompson*, often with differing expectations of what the county prosecutors should do to meet the statutory requirements of section 805-1, Hawaii Revised Statutes. In the First Circuit alone, some judges have ruled that the Department of the Prosecuting Attorney of the City and County of Honolulu's current procedures, which include declarations designed to meet statutory requirements, satisfy *Thompson*, while others have ruled that the complaints, containing the same declarations, must be dismissed because they do not conform with the statutory requirements. In many of these cases, there is no discernible difference in the complaints, yet the outcomes differ due to which judge the complaint is assigned to. This measure will address outdated and ambiguous language in section 805-1, Hawaii Revised Statutes, by clarifying the acceptable procedure for initiating criminal complaints to include a signature by the prosecuting officer.

Your Committee believes that this measure will restore the pre-*Thompson* interpretation of section 805-1, Hawaii Revised Statutes. Your Committee notes that this measure is intended to neither expand nor contract the procedure to bring a criminal charge, but rather restore the procedure required by section 805-1, Hawaii Revised Statutes, to its pre-*Thompson* interpretation. This process reflects that criminal cases are initiated and prosecuted by the State of Hawaii, represented by the County Offices of the Prosecuting Attorney and the Department of the Attorney General, and not by individuals.

As affirmed by the record of votes of the members of your Committee on Judiciary that is attached to this report, your Committee is in accord with the intent and purpose of H.B. No. 1541, and recommends that it pass Second Reading and be placed on the calendar for Third Reading.



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

Karl Rhoads

KARL RHOADS, Chair



The Senate
 Thirty-First Legislature
 State of Hawai'i

Record of Votes
Committee on Judiciary
JDC

Bill / Resolution No.:* HB 1541	Committee Referral: JDC	Date: 03-15-22
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The Committee is reconsidering its previous decision on this measure.
 If so, then the previous decision was to: _____

The Recommendation is:
 Pass, unamended 2312
 Pass, with amendments 2311
 Hold 2310
 Recommit 2313

Members	Aye	Aye (WR)	Nay	Excused
RHOADS, Karl (C)	/			
KEOHOKALOLE, Jarrett (VC)	/			
ACASIO, Laura	/			
GABBARD, Mike	/			
KIM, Donna Mercado	/			
LEE, Chris	/			
FEVELLA, Kurt	/			
TOTAL	7	-	-	-

Recommendation:
 Adopted
 Not Adopted

Chair's or Designee's Signature: 

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*Only one measure per Record of Votes