

DEPARTMENT OF THE PROSECUTING ATTORNEY
CITY AND COUNTY OF HONOLULU

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THE HONORABLE KARL RHOADS, CHAIR
SENATE COMMITTEE ON JUDICIARY
Thirty-First State Legislature
Regular Session of 2022
State of Hawai'i

March 15, 2022

RE: H.B. 1541; RELATING TO CRIMINAL COMPLAINTS.

Chair Rhoads, Vice-Chair Keohokalole and members of the Senate Committee on Judiciary, the Department of the Prosecuting Attorney of the City and County of Honolulu ("Department") submits the following testimony in **strong support** of H.B. 1541. This bill is part of the Department's 2022 legislative package, and we thank you for hearing it.

The purpose of H.B. 1541, is to clarify ambiguous and antiquated language currently found in section 805-1 of the Hawaii Revised Statutes ("HRS"). Chapter 805 guides the procedures for all cases originating in the District Courts of the State of Hawaii, and HRS §805-1, in particular, outlines the procedures for initiating criminal complaints in certain District Court cases.¹

On December 10, 2021 the Supreme Court of the State of Hawaii ruled in *State v. Thompson*,² that the county prosecutor in the Third Circuit did not meet statutory requirements to

¹ HRS §805-1 states: "§805-1 Complaint; form of warrant. When a complaint is made to any prosecuting officer of the commission of any offense, the prosecuting officer shall examine the complainant, shall reduce the substance of the complaint to writing, and shall cause the complaint to be subscribed by the complainant under oath, which the prosecuting officer is hereby authorized to administer, or the complaint shall be made by declaration in accordance with the rules of court. If the original complaint results from the issuance of a traffic summons or a citation in lieu of an arrest pursuant to section 803-6, by a police officer, the oath may be administered by any police officer whose name has been submitted to the prosecuting officer and who has been designated by the chief of police to administer the oath, or the complaint may be submitted by declaration in accordance with the rules of court. Upon presentation of the written complaint to the judge in whose circuit the offense allegedly has been committed, the judge shall issue a warrant, reciting the complaint and requiring the sheriff, or other officer to whom it is directed, except as provided in section 805-3, to arrest the accused and to bring the accused before the judge to be dealt with according to law; and in the same warrant the judge may require the officer to summon such witnesses as are named in the warrant to appear and give evidence at the trial. The warrant may be in the form established by the usage and practice of the issuing court."

² *State v. Thompson*, 150 Haw 262, 500 P.3d 447 (2021). Accessed online via Westlaw (paid service); also available online at <https://cases.justia.com/hawaii/supreme-court/2021-scwc-17-0000361.pdf?ts=1639161279>; last accessed March 14, 2022.

produce a valid criminal complaint in a penal summons case, as laid out in HRS §805-1, reversing a prior decision by the Immediate Court of Appeals (“ICA”). Specifically, the Supreme Court held that “in order to comply with HRS §805-1, the underlying complaint should have been 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).”³ Because the *Thompson* decision was limited to the specific facts of that case—as is the Supreme Court’s general practice—it only indicated that the complaint submitted in *that* case did not meet the statutory requirements of HRS §805-1, without providing specific guidance on what *would* constitute a sufficient “declaration in accordance with the rules of court.” As a result of this lack of guidance, some District and Family Court judges have been interpreting *Thompson* broadly, applying the ruling not only to penal summons cases, but to many other types of cases that were not considered by the Supreme Court.

The Third Circuit complaint filed in *Thompson* conformed with all applicable rules of court, except that it was not “made by declaration in lieu of an affidavit in conformity with HRPP Rule 47(d),” as required by HRS §805-1. By contrast, all complaints filed by the Department in the First Circuit have routinely included declaratory language, which tracks the language found in Hawaii Rules of Penal Procedure (“HRPP”) Rule 47(d) exactly⁴:

“I, [Deputy Prosecuting Attorney] declare under penalty of law that the foregoing is true and correct to the best of my knowledge and belief.”

and each complaint is signed by the deputy prosecutor who screened and charged that case.

Notably, when reviewing the sufficiency of the Third Circuit prosecutor’s complaint, “[t]he ICA reasoned that the crucial element for initiating and maintaining a prosecution is the prosecutor’s signature – and not a complainant’s signature.”⁵ This reasoning was based on prior Supreme Court caselaw, and the fact that HRPP Rule 7 was amended in 2008 by the Judiciary’s rulemaking committee, “to remove the option that a complaint ‘shall be sworn or affirmed in writing before the prosecutor by the complaining witness and be signed by the prosecutor,’” leaving only the requirement that “[a] complaint shall be signed by the prosecutor.”⁶

The Supreme Court nevertheless held that, regardless of any outside considerations, “[t]he courts must give effect to the State’s statutory obligations[,]” and “HRS §805-1 unambiguously requires the State to ensure that complaints are either subscribed under oath by a complainant or accompanied by a declaration in lieu of an affidavit.”⁷

³ *Id.*, at 268, 453.

⁴ Hawaii Rules of Penal Procedure, Rule 47(d) Declaration in lieu of affidavit. In lieu of an affidavit, an unsworn declaration may be made by a person, in writing, subscribed as true under penalty of law, and dated, in substantially the following form:

I, _____, do declare under penalty of law that the foregoing is true and correct to the best of my knowledge and believe.

Dated:

(Signature)

⁵ *Id.*, at 266, 451.

⁶ See *Thompson*, at FN 9. HRPP Rule 7(d) (2000) provided in relevant part that “[a] complaint shall be signed by the prosecutor, or it shall be sworn to or affirmed in writing before the prosecutor by the complaining witness and signed by the prosecutor[.]” Also see current HRPP Rule 7(d), which states in relevant part: “A complaint shall be signed by the prosecutor”; available online at <https://casetext.com/rule/hawaii-court-rules/hawaii-rules-of-penal-procedure/iii-the-charge/rule-7-the-indictment-information-or-complaint>; last accessed March 14, 2022.

⁷ *Thompson*, at 296, 454.

Turning to the language of H.B. 1541, the proposed amendments to HRS §805-1 would retain the two existing options for generating a complaint (i.e. to be subscribed by the complainant under oath or made by declaration [in lieu of an affidavit] in accordance with the rules of court), but would also add a third option, for the complaint to be signed by the prosecutor (see page 1, line 14). Given that the applicable rules of court, which were adopted by the Judiciary itself, already note the sufficiency of having a prosecutor sign the complaint—even without the complaint being sworn or affirmed by the complaining witness—H.B. 1541 would essentially add that modern-day alternative to the list of statutorily allowed methods.⁸

Also, the current language directing a prosecutor to “examine the complainant” (see page 1, lines 5-6) is unclear and out-of-touch with current procedures and vernacular, possibly due to the passage of 130 years since HRS §805-1 was first enacted. Looking to our court rules, the modern purpose of a criminal complaint is for the State to decide on, and the defendant to understand, the offense(s) with which the defendant is being charged.⁹ Thus, rather than having a prosecutor personally “examine the complainant” (which is itself ambiguous and open to interpretation), a much clearer, modern-day approach is for prosecutors to “review the evidence” before filing a criminal complaint. Under our current system, we accomplish this by reviewing the evidence gathered by law enforcement officers in every case, including statements made by complainants, then decide whether a criminal complaint should be filed.

Without further clarification, HRS §805-1 has now become a huge source of contention and is beginning to wreak havoc on our criminal justice system. Since the *Thompson* decision was issued, **nearly one thousand District Court and Family Court cases have been dismissed in the First Circuit**, ranging from to Operating a Vehicle Under the Influence of an Intoxicant (HRS §291E-61), to Sex Assault (HRS §707-733), Assault (HRS §707-712) and many other charges. Also included in this figure is approximately 200 Family Court cases involving Abuse of a Family or Household Member (HRS §709-906), violation of TRO (HRS §586-4), and/or violation of order for protection (HRS §586-11). Some counties are even seeing “*Thompson* motions” being filed by defense counsel in felony matters. And our courts are clearly struggling with interpreting HRS §805-1 as written.

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 HRS

⁸ *Id.*

⁹ *See* HRPP Rule 5(b)(1), as cited in relevant part by *Thompson*, at 265, 450, FN 5: “(1) Arrestment. In the district court, if the offense charged against the defendant is other than a felony, the complaint shall be filed and proceedings shall be had in accordance with this section (b). A copy of the complaint, including any affidavits in support thereof, and a copy of the appropriate order, if any, shall be furnished to the defendant. When the offense is charged by complaint, arrestment shall be in open court, or by video conference when permitted by Rule 43. The arrestment shall consist of the reading of the complaint to the defendant and calling upon the defendant to plead thereto. The defendant may waive the reading of the complaint or the recitation of the essential facts constituting the offense charged at arrestment In addition to the requirements of Rule 10(e), the court shall, in appropriate cases, inform the defendant of the right to jury trial in the circuit court and the defendant may elect to be tried without a jury in the district court.” *See* also HRPP Rule 7(d), which states in relevant part: **(d) Nature and contents...**A complaint shall be signed by the prosecutor. The charge need not contain a formal conclusion or any other matter not necessary to such statement...The charge shall state for each count the official or customary citation of the statute, rule, regulation or other provision of law which the defendant is alleged therein to have violated. Formal defects, including erroneous reference to the statute, rule, regulation or other provision of law, or the omission of such reference, shall not be ground for dismissal of the charge or for reversal of a conviction if the defect did not prejudice the defendant.”

§805-1. In the First Circuit alone, some judges have ruled that the Department’s current procedures, which include declarations designed to meet statutory requirements, satisfy *Thompson*, while others have ruled that the Department’s complaints—containing the same declarations—must be dismissed because they do not conform with the statutory requirements. As previously noted, some judges are ruling that *Thompson* only applies to cases involving a warrant or penal summons, while others maintain it applies to all cases; interpretations of “complainant” and “declaration” also vary, and some judges are even reading into the statute and caselaw to consider other factors.

In many of these cases, there is no discernible difference in the complaints, other than the fact that they were assigned to different judges. This pattern has been repeated in all of the judicial circuits in the State and the lack of consistency is causing increasing turmoil and confusion for county prosecutors. If these cases are forced to go up on appeal to seek definitive answers, it may literally be years before any of these cases are decided (one way or the other) by the Supreme Court. Even then, there is no guarantee that clear guidance can or will be provided. Meanwhile, hundreds more cases will be dismissed or put on hold—including domestic violence, sex assault, and drunk driving cases—unless and until the Legislature is able to provide further direction very soon, and clarify what is actually needed to generate a valid criminal complaint.

For all of the foregoing reasons, the Department of the Prosecuting Attorney of the City and County of Honolulu **strongly supports** the passage of H.B. 1541, as-is. Thank you for the opportunity to testify on this matter.



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March 15, 2022

To: The Honorable Karl Rhoads, Chair, Senator Jarrett Keohokalole, Vice Chair, Senate Committee on Judiciary, and Committee Members

From: Arkie Koehl, Public Policy Committee; Mothers Against Drunk Driving (MADD) Hawaii

Re: House Bill 1541 – RELATING TO CRIMINAL COMPLAINTS

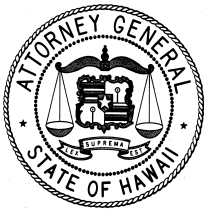
I'm Arkie Koehl, a MADD Hawaii volunteer, speaking on behalf of my fellow MADD members in strong support of House Bill 1541.

Bottom line: the confusion among law enforcement, the bench and others arising from December's Hawaii State Supreme Court *State v. Thompson* decision has resulted in hundreds of dismissals of impaired driving (OVUII) cases, not to mention domestic violence and other criminal cases.

For the victims of these crimes, and for the community at large, this is an outrage.

We implore you to help enact an immediate, standardized legislative fix to remedy this situation. **HB 1541 provides just such a fix.**

Thank you for the opportunity to testify.



**TESTIMONY OF
THE DEPARTMENT OF THE ATTORNEY GENERAL
THIRTY-FIRST LEGISLATURE, 2022**

ON THE FOLLOWING MEASURE:

H.B. NO. 1541, RELATING TO CRIMINAL COMPLAINTS.

BEFORE THE:

SENATE COMMITTEE ON JUDICIARY

DATE: Tuesday, March 15, 2022 **TIME:** 9:30 a.m.

LOCATION: State Capitol, Room 016 and Via Videoconference

TESTIFIER(S): Holly T. Shikada, Attorney General,
Amy Murakami, Deputy Attorney General

Chair Rhoads and Members of the Committee:

The Department of the Attorney General (Department) supports this bill.

The purpose of this bill is to amend section 805-1, Hawaii Revised Statutes (HRS), to allow prosecuting attorneys to initiate criminal cases in the district courts by reviewing the evidence, creating written complaints, or signing the complaints.

In the recent Hawaii Supreme Court decision in State v. Thompson, 150 Hawai'i 262, 500 P.3d 447 (2021), the court held that district court criminal complaints must strictly comply with the provisions of section 805-1, HRS. In particular, section 805-1, HRS, requires the written complaint "be subscribed by the complainant under oath, which the prosecuting officer is hereby authorized to administer, or the complaint shall be made by declaration in accordance with the rules of court." However, the court's ruling did not specify who could make the declaration or who constituted a complainant. The court also did not clarify what a complaint made by declaration would require.

The lack of clarity has resulted in inconsistent rulings in the district courts and cases being dismissed, sometimes with prejudice, based on the form of the complaint and not the merits of the case.

The amendment proposed by this bill addresses this issue by allowing prosecuting attorneys to review the evidence, to decide whether criminal charges are appropriate, and to create a written complaint that the prosecuting attorney signs before filing. This process reflects that criminal cases are initiated and prosecuted by the State

of Hawaii, represented by the County Offices of the Prosecuting Attorneys and the Department of the Attorney General, and not by individuals.

The amendment proposed by this bill will not affect the constitutional rights of defendants. The constitutional right to confrontation under the United States Constitution and the Hawaii State Constitution is the right to confront and cross-examine witnesses at trial. Whether or not a victim or law enforcement officer signs the complaint to initiate the case does not affect a defendant's right to confront adverse witnesses at trial.

In felony cases, the defendant has a constitutional right under the United States Constitution and the Hawaii State Constitution to a probable cause determination by a grand jury or by a judge through a felony information or preliminary hearing. When a felony case is initiated in district court, the defendant has a right to an expeditious preliminary hearing after the filing of the complaint. Additionally, if the defendant is being held in custody prior to the preliminary hearing, a judge will make a judicial determination if probable cause exists to hold the suspect based on a review of documents submitted by the prosecution. These safeguards will remain in place.

In non-felony criminal cases, the defendant does not have a constitutional right to a probable cause determination prior to the filing of charges. A defendant in a non-felony case has a right to a judicial determination of probable cause when the defendant is held in custody for more than forty-eight hours or the prosecution is requesting a warrant of arrest. Therefore, the procedural change in this bill that allows a complaint signed by a prosecutor to be filed will not adversely affect the defendant's constitutional rights.

The Department respectfully requests the passage of this bill.

STATE OF HAWAI‘I
OFFICE OF THE PUBLIC DEFENDER

**Testimony of the Office of the Public Defender,
State of Hawai‘i to the Senate Committee on the Judiciary**

March 15, 2022

H.B. No. 1541: RELATING TO CRIMINAL COMPLAINTS

Chair Rhoads, Vice Chair Keohokalole, and Members of the Committee:

The Office of the Public Defender respectfully opposes H.B. No. 1541 and offers comments for the committee’s consideration. This bill seeks to unnecessarily amend Hawai‘i Revised Statutes (“HRS”) § 805-1 to allow criminal complaints to be supported solely by the signature of the prosecutor. However, this amendment would violate the accused’s substantial right to challenge the veracity of his or her accuser, as recognized by the Legislature in 2007. *See* S. Stand. Comm. Rep. No. 1194, in 2007 Senate Journal, at 1557-58.

Under the current version of HRS § 805-1, a complaint must be (1) subscribed by the complainant under oath or (2) made by declaration of the complainant. The requirement that the accuser/complainant support his or her accusations is based on the constitutional right of the accused to challenge the veracity of his or her accuser. *See State v. Thompson*, 150 Hawai‘i 262, 268-69, 500 P.3d 447, 453-54 (2021). In *Thompson*, the Hawai‘i Supreme Court confirmed the requirements of HRS § 805-1 and held that the lower court did not err in dismissing the complaint without prejudice where the prosecution had failed to comply with those requirements. After examining the legislative history of HRS § 805-1, the Supreme Court concluded that the Legislature had imposed the requirements that the complaint be either subscribed to by the complainant under oath or supported by declaration of the complainant to protect the accused’s right to challenge the veracity of the complainant. *Id.* The proposed amendment seeks to sidestep the holding of the Hawai‘i Supreme Court and the requirements of HRS § 805-1.¹

¹ In *Thompson*, the Supreme Court held that the lower court had not erred in dismissing the case *without* prejudice. *Id.* at 269-70, 500 P.3d at 454-55. In other words, the State can re-file charges using a complaint which meets the requirements of HRS § 805-1. This holding mitigates any claim that an amendment is necessary to prevent the State from prosecuting any charges that are dismissed due to a failure to comport with the statutory requirements.

The Office of the Public Defender respectfully disagrees with the position of the Department of the Prosecuting Attorney (as reflected in HSCR798-22) that this amendment is necessary because the Supreme Court's opinion failed to specify who constituted a complainant or who could make the declaration. There is no ambiguity in the statute, the prosecuting officer is not the complainant. HRS § 805-1 specifies that "the complainant" must subscribe to the complaint under oath administered by the prosecuting officer or by declaration in lieu of affidavit. Obviously, the prosecuting officer cannot administer the oath to himself or herself. The prosecutor is not the complainant as the prosecutor is neither a witness to nor the victim of the incident. The prosecutor's review of the evidence would be based solely on hearsay statements made by the actual complainant. The accused could not challenge the veracity of the complainant on a complaint that was attested to by the prosecutor. The prosecutor's signature would only confirm that he or she had reviewed the evidence, not the veracity of the statements of the witnesses. Indeed, the Honolulu Department of the Prosecuting Attorney has begun attaching police reports and victim statements to the complaints in family court criminal cases and designating them as declarations pursuant to HRS § 805-1. This confirms that the prosecutor's office is aware that the prosecuting officer cannot serve as the complainant.

This is not a situation where an amendment is necessary because a statute has been found to unlawful, unconstitutional, or requiring clarification. The Legislature recognized the importance of protecting the rights of the accused and clearly and unambiguously set forth the requirements for the filing of a criminal complaint – the requirements of HRS § 805-1 are not in question. ***Instead of simply conforming to the clear and unambiguous language of HRS § 805-1, the prosecution seeks to sidestep the statutory requirements and amend the statute to allow a complaint to be supported by the signature of the prosecuting officer after review of the evidence because compliance is inconvenient.*** Such an amendment would not only violate the Legislature's purpose in enacting HRS § 805-1 but the constitutional rights of the accused. Additional legal challenges would be inevitable due to the questionable validity of such an amendment.

Allowing the prosecuting officer to review and subscribe to the validity of his or her own charges is inconsistent with our system of charging criminal offenses. ***Our criminal charging system requires safeguards independent of the prosecutor who is bringing the charges to ensure their veracity.*** When criminal charges are brought via indictment, the grand jury provides the important safeguard of protecting against unwarranted prosecution by ensuring that there is probable cause to support the charge. State v. Chong, 86 Hawai'i 282, 949 P.2d 122 (1997). In charges filed by felony information the court reviews the charge and supporting exhibits "to determine whether there is probable cause to believe that the offense charged was

committed and that the defendant committed the offense charged.” HRS § 806-85(a). Neither indictment nor felony information charging allows the prosecutor to provide the sole review of the veracity of the charges. The requirements of HRS § 805-1 also safeguard against unwarranted prosecution by requiring that the accuser support their accusations either by subscribing to the veracity of their claims under oath or by supporting declaration. The proposed amendment would eliminate this safeguard at the expense of the accused’s substantial rights.

The filing of a criminal complaint against an individual carries with it public stigma, personal and financial hardship, and psychological and emotional stress. To mitigate the possibility that the complaint is unfounded, retaliatory, or harassing, HRS § 805-1 requires that the complainant vouch for the veracity of his or her allegations and that the accused have the opportunity to challenge the veracity of his or her accuser. The proposed amendment would bypass these protections and thereby violate the constitutional right of the accused to challenge the veracity of his or her accuser.

Thank you for the opportunity to comment on this measure.

Rebecca Like
Acting Prosecuting Attorney

Jennifer S. Winn
Acting First Deputy

Leon J. C. Davenport, III
Acting Second Deputy



Diana Gausepohl-White
Victim/Witness Program Director

Theresa Koki
Life's Choices Kaua'i Program
Prevention Services Coordinator

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March 15, 2022

RE: H.B. 1541; RELATING TO CRIMINAL COMPLAINTS.

Chair Rhoads, Vice-Chair Keohokalole and members of the Senate Committee on Judiciary, the Office of the Prosecuting Attorney for the County of Kaua'i submits the following testimony in strong support of H.B. 1541. Thank you for the opportunity to be heard as to this matter.

On December 10, 2021 the Supreme Court of the State of Hawai'i issued its ruling in *State v. Thompson*,¹ holding that the prosecuting attorney's signature affixed to the bottom of the criminal complaint was insufficient without an additional signature of either the complainant or 'declaration in lieu of affidavit'. The Supreme Court upheld the dismissal of the complaint in that particular case.

Since then, a wave of motions to dismiss criminal complaints have been filed on every island, in district courts, family courts, and circuit courts. The vagueness of HRS §805-1 has caused a variety of different rulings on the exact same issue: while some judges have ruled that HRS §805-1 allows a prosecuting attorney to sign the 'declaration in lieu of affidavit', some have held that a separate entity must sign – either the complainant/victim or the arresting/citing police officer.

The effect of *State v. Thompson* is vast and could potentially lead to dismissals of any and all complaints filed in district courts, all family court cases, and any misdemeanor jury demands or felony level circuit court complaints which were initiated in a District Court.

On Kaua'i, we have also seen a number of motions to dismiss where the argument is that HRS §805-1 allows for only the complainant/victim of the crime to sign the 'declaration in lieu of affidavit' on criminal complaints. This

¹ *State v. Thompson*, 150 Haw 262, 500 P.3d 447 (2021).

particular argument, if adopted by any of the Hawai'i judges, would have a profound effect on the ability of Prosecutors to bring forth criminal charges. Many crimes are 'victimless' including all non-collision drunk driving cases and a large portion of traffic crimes. Animals, young children, deceased or otherwise incompetent individuals can also be victims of crimes, as can legal entities. These parties may be incapable of 'signing' a complaint or declaration in lieu of affidavit. Additionally, a single 'victim' may be aware of some, but not all, of the facts which give rise to a criminal charge. It would be improper for such a complainant to sign a complaint or a declaration in lieu of affidavit. Finally, many victims of violent crimes such as domestic violence would be too afraid to sign a complaint against their aggressor.

The present language of HRS 805-1 is vague as to who can sign the declaration in lieu of affidavit on the complaint. The amendment under House Bill 1541 would clear up this confusion by specifically allowing the prosecuting attorney's signature on a complaint to be sufficient to bring a charge. This amendment would also not infringe on any rights of the defendant as the essential purpose of the complaint is to apprise the Defendant of what they need to defend against. Allowing the prosecuting attorney alone to sign the complaint would not affect this in any way. It would also not in any way infringe on the defendant's ability to ascertain what he is being charged with or his right to confront his accuser(s) at trial.

The amendment under H.B. 1541 would also bring HRS 805-1 into conformity with the Hawai'i Rules of Penal Procedure, which specifically allow for the Prosecuting Attorney alone to sign the complaint². When discussing other types of charging documents (for example, Indictments) the Hawai'i Rules of Penal Procedure Rule 7 lists all other parties required to sign the charge in order for it to be effective. Yet, for complaints, no other signature is required other than the prosecutor's. This discrepancy has only added to the confusion of HRS §805-1 and how it should be interpreted.

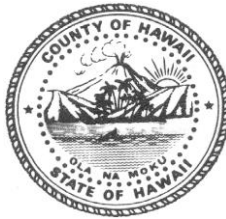
Finally, requiring an additional party to sign the complaint is unnecessary, given the purpose of the complaint. The individual signing the complaint is essentially verifying that the alleged facts meet a certain legal standard to bring the case forward. The person signing the complaint is also verifying that, as to each element of each charge, that legal standard has been met in order to file the charge. The person in the best position to make this verification is the prosecuting attorney, as opposed to the victim, police officer, or any other party. The current amendment, which allows the prosecutor to file a charge after reviewing the evidence more succinctly and properly reflects the method in which cases are currently brought forth.

² See Hawai'i Rules of Penal Procedure, Rule 7(d).

For the foregoing reasons, the Office of the Prosecuting Attorney for the County of Kaua'i strongly supports the passage of H.B. 1541. Thank you for the opportunity to testify on this matter.

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OFFICE OF THE PROSECUTING ATTORNEY
TESTIMONY IN SUPPORT OF HOUSE BILL 1541

A BILL FOR AN ACT RELATING
TO CRIMINAL COMPLAINTS

COMMITTEE ON JUDICIARY
Senator Karl Rhoads, Chair
Senator Jarrett Keohokalole, Vice Chair

Tuesday, March 15, 2022 at 9:30 a.m.
State Capitol Conference Room 016
& Via Videoconference

Honorable Chair Rhoads, Vice-Chair Keohokalole and Members of the Committee on Judiciary. The County of Hawai'i, Office of the Prosecuting Attorney submits the following testimony in support of House Bill 1541.

This bill was drafted to amend Hawaii Revised Statutes Section 805-1, relating to the required form of a written complaint at the initiation of a criminal case, specifically allowing a written complaint to be signed by the prosecuting officer.

In the recent Hawaii Supreme Court decision in State v. Thompson, SCWC-17-0000361 (December 10, 2021), the court held that complaints must strictly comply with HRS 805-1.

Courts in the Third Circuit are interpreting Thompson to require that complaints contain the signature of the complainant. However, one of the unanswered questions following the Thompson opinion is who constitutes the complainant. This ambiguity has resulted in inconsistent rulings among the District Courts, Family Courts, and Circuit Courts across the State, and the dismissal of cases based on an ambiguous and trivial procedural justification as opposed to a review of the merits of a case.

In addition to HRS 805-1, the Hawaii Rules of Penal Procedure also sets forth requirements relating to signatures on complaints as follows:

(d) Nature and Contents. The charge shall be a plain, concise and definite statement of the essential facts constituting the offense charged. An indictment shall be signed by the prosecutor and the foreperson of the grand jury. An information shall be signed by the prosecutor. **A complaint shall be signed by the prosecutor.** Haw. R. Penal P. 7, emphasis added.

The ruling in Thompson reviewed the legislative history of HRS 805-1, stating the following, “[w]hen the legislature amended HRS 805-1 to provide prosecutors with the option to make complaints by declaration, the Senate Committee on Judiciary and Labor explained that ‘allowing the use of declarations in lieu of affidavits for arrest citations and traffic crime complaints is consistent with the current rules of court’.” Id. at 12. The proposed amendment continues and clarifies that a Prosecuting Officer has the authority to initiate a complaint against the accused following a review of the available evidence.

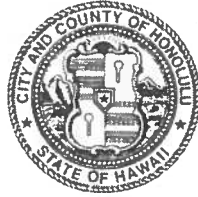
This bill will restore predictability and stability in the trial courts by providing a clear standard for the contents of criminal complaints and follows the requirements that the Judiciary has already adopted and follow through the application of Hawaii Rule of Penal Procedure Rule 7. This bill will not reduce a defendant’s constitutional rights to present a defense, nor does it affect any rights of a defendant relating to the timely disposition of a criminal case.

The County of Hawai’i, Office of the Prosecuting Attorney remains committed to ensuring that justice is administered while protecting the rights of victims and the constitutional rights of the accused.

For the foregoing reasons, the, County of Hawai’i, Office of the Prosecuting Attorney Supports the passage of House Bill No. 1541. Thank you for the opportunity to testify on this matter.

POLICE DEPARTMENT
CITY AND COUNTY OF HONOLULU

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RICK BLANGIARDI
MAYOR

RADE K. VANIC
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OUR REFERENCE AP-TK

March 15, 2022

The Honorable Karl Rhoads, Chair
and Members
Committee on Judiciary
State Senate
Hawaii State Capitol
415 South Beretania Street, Room 016
Honolulu, Hawaii 96813

Dear Chair Rhoads and Members:

SUBJECT: House Bill No. 1541, Relating to Criminal Complaints

I am Andre Peters, Acting Captain of the Traffic Division of the Honolulu Police Department (HPD), City and County of Honolulu.

The HPD supports House Bill No. 1541, Relating to Criminal Complaints.

The HPD supports the proposal to clarify acceptable procedures for initiating criminal complaints by updating ambiguous and antiquated language regarding proper procedure for initiating criminal complaints in certain District Court cases set forth in Chapter 805-1 of the Hawaii Revised Statutes (HRS). On December 10, 2021, the Hawaii Supreme Court overturned an Intermediate Court of Appeals decision in *State versus Thompson*, holding that the State did not meet the statutory requirements to produce a valid criminal complaint, pursuant to Chapter 805-1, HRS.


This proposed language would help to meet the statutory requirements, as interpreted, and should be considered.

The Honorable Karl Rhoads, Chair
and Members
March 15, 2022
Page 2

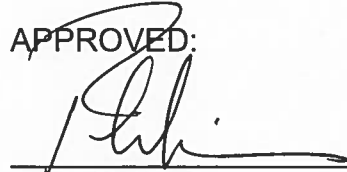
The HPD urges you to support House Bill No. 1541, Relating to Criminal Complaints.

Thank you for the opportunity to testify.

Sincerely,

 *Andre Peter*
Andre Peter, Acting Captain
Traffic Division

APPROVED:



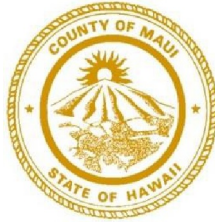
For

Rade K. Vanic
Interim Chief of Police

MICHAEL P. VICTORINO
Mayor

ANDREW H. MARTIN
Prosecuting Attorney

MICHAEL S. KAGAMI
First Deputy Prosecuting Attorney



DEPARTMENT OF THE PROSECUTING ATTORNEY
COUNTY OF MAUI
150 SOUTH HIGH STREET
WAILUKU, MAUI, HAWAII 96793
PHONE (808) 270-7777 • FAX (808) 270-7625

TESTIMONY ON
H.B. 1541 RELATING TO
CRIMINAL COMPLAINTS

March 14, 2022

The Honorable Karl Rhoads
Chair
The Honorable Jarrett Keohokalole
Vice Chair
and Members of the Committee on Judiciary

Chair Rhoads, Vice Chair Keohokalole, and Members of the Committee:

The Department of the Prosecuting Attorney for the County of Maui **strongly supports** H.B. 1541, Relating to Criminal Complaints. This important bill addresses the outdated and ambiguous language in Hawai'i Revised Statutes ("HRS") § 805-1. While HRS § 805-1 provides basic procedures for filing criminal complaints in the district courts, its interpretation in the wake of *State v. Thompson*, 150 Hawai'i 262, 500 P.3d 447 (2021) has created uncertainty and uneven results in the trial courts.

State v. Thompson holds that there are two methods under HRS § 805-1 for perfecting a criminal complaint upon which an arrest warrant or penal summon may issue. First, the complaint may be subscribed under oath by the complainant. Second, the complaint may be "made by declaration in accordance with the rules of court." Both methods under the existing statute have proven problematic in light of *Thompson's* interpretation of HRS § 805-1.

The first method recognized by *Thompson* provides undesired and anomalous results. Requiring complainants to sign complaints instituting criminal charges would create a severe chilling effect in many criminal prosecutions where the victims are most vulnerable. It can already be difficult for vulnerable victims to file a police report and appear at trial to confront the offender. Because of *Thompson's* interpretation of HRS § 805-1, abuse victims would also be forced to sign complaints against their abuser before going home to them. Child sexual assault victims would be required to allege criminal acts under oath against an offender who could reside in the same home. This is in addition to the obviously absurd result of requiring a complainant's signature in cases where they are deceased or otherwise incapable of signing the complaint.¹

¹ Requiring complainants to sign a criminal complaint could also place them in the untenable position of averring to facts under oath to which they do not have personal knowledge. It is not uncommon for victims of crime to have incomplete information about the offense committed against them. A burglary victim would certainly know

The second option under HRS § 805-1 and *Thompson* has also proven to be problematic. *Thompson* made clear that, in order to comply with this second option, the complaint should be made by a declaration “in conformity with [Hawai`i Rules of Penal Procedure (“HRPP”)] Rule 47(d).” While Rule 47(d) clearly states that the declaration “may be made by a person,” *Thompson* did not specifically state *who* that person should be.

Thompson’s lack of specific direction has resulted in confusion and inconsistent results in the Second Circuit. Dozens of motions to dismiss arguing that criminal complaints were defective because they were not signed by the complainant have been filed in both district courts and circuit courts. Some motions have been granted, while others have not. Often, motions that have been granted and those denied have the same operative facts. As a result, HRS § 805-1 must be amended to ensure consistency in cases in the Second Circuit and across the state.

H.B. 1541 will restore predictability and stability in the trial courts by providing a clear standard for filing criminal complaints. By explicitly allowing complaints to be perfected with the prosecutor’s signature, prosecutors and trial courts across the state will know precisely what is required to file a complaint under HRS § 805-1. This amendment to the statute will also align HRS § 805-1 with HRPP Rule 7. As noted in the Intermediate Court of Appeal’s opinion in *Thompson*:

prior to July 1, 2008, [HRPP] Rule 7(d) expressly allowed for a complaint to be “sworn or affirmed in writing before the prosecutor by the complaining witness,” as long as the complaint was also signed by the prosecutor, but the supreme court deleted that language in amendments to the rule.

147 Hawai`i 118, 123, 464 P.3d 906, 911 *overruled on other grounds by* 150 Hawai`i 262, 500 P.3d 447.

Finally, H.B. 1541 will not reduce a defendant’s constitutional right to present a defense. Defendants will still have the ability to challenge the charges against them at trial with their right to confrontation, compulsory process, right to testify, and others. This bill does not diminish any of these rights in the slightest. Although *Thompson* noted the supposed need to “challenge the veracity of the [accuser]” as a justification for the current version of HRS § 805-1, 150 Hawai`i 262, 269, 500 P.3d 447, 454, nothing in the current statute provides any process for doing so. Nor does allowing the prosecutor to sign a criminal complaint reduce the defendant’s ability to challenge the veracity of witnesses at trial. Rather, this bill simply clarifies the process of filing criminal complaints.²

For these reasons, the Department of the Prosecuting Attorney for the County of Maui **strongly supports** H.B. 1541. Please feel free to contact our office at (808) 270-7777 if you have any questions or inquiries.

Thank you very much for the opportunity to provide testimony on this bill.

that their property was stolen, but they many not know *who* stole it – the identity of the perpetrator may be established by other witnesses, such as police officers. But under the current version of HRS § 805-1, the complainant is required to subscribe to the *entire* complaint under oath.

² H.B. 1541 also modernizes the practice of filing criminal complaints. HRS § 805-1 was originally enacted in 1892. Since that time, it has been recognized that the prerogative of filing criminal charges rests with the prosecution. *See e.g. State v. Pitolo*, 141 Hawai`i 131, 140, 406 P.3d 354, 363 (App. 2017) (“The State has wide prosecutorial discretion, including with respect to what charges will be filed, how many charges will be filed, and how to frame and argue the issues in the case.”). This bill moves HRS § 805-1 towards the modern theory of prosecutorial discretion and removes the burden of filing criminal charges from victims.



HAWAII STATE
COALITION AGAINST
DOMESTIC VIOLENCE

March 15, 2022

Members of the Senate Committee on Judiciary:

Chair Karl Rhoads
Vice Chair Jarrett Keohokalole
Sen. Laura Acasio
Sen. Kurt Fevella
Sen. Mike Gabbard
Sen. Donna Mercado Kim
Sen. Chris Lee

Re: HB1541 Relating to Criminal Complaints

Dear Chair Rhoads, Vice Chair Keohokalole, and Members of the Senate Committee on Judiciary:

The Hawai'i State Coalition Against Domestic Violence (HSCADV) advances the safety and healing of victims, survivors and their families. We are the collective voice of a diverse network of organizations and individuals, working to eliminate all forms of domestic violence in Hawai'i by fostering partnership, increasing awareness of domestic violence, developing the capacity our member programs and community partners to address the needs of survivors and their families, and advocating for social justice and change. On behalf of HSCADV and our 26 member programs statewide, I respectfully submit testimony in strong support of HB1541.

The purpose of HB 1541, is to clarify language currently found in section 805-1 of the Hawai'i Revised Statutes (HRS). Chapter 805 guides the procedures for all cases originating in the District Courts of the State of Hawaii, and HRS §805-1, in particular, outlines the procedures for initiating criminal complaints in certain District Court cases.¹

¹ HRS §805-1 states: "§805-1 Complaint; form of warrant. When a complaint is made to any prosecuting officer of the commission of any offense, the prosecuting officer shall examine the complainant, shall reduce the substance of the complaint to writing, and shall cause the complaint to be subscribed by the complainant under oath, which the prosecuting officer is hereby authorized to administer, or the complaint shall be made by declaration in accordance with the rules of court. If the original complaint results from the issuance of a traffic summons or a citation in lieu of an arrest pursuant to section 803-6, by a police officer, the oath may be administered by any police officer whose name has been submitted to the prosecuting officer and who has been designated by the chief of police to administer the oath, or the complaint may be submitted by declaration in accordance with the rules of court. Upon presentation of the written complaint to the judge in whose circuit the offense allegedly has been committed, the judge shall issue a warrant, reciting the complaint and requiring the sheriff, or other officer to whom it is directed, except as provided in section 805-3, to arrest the accused and to bring the accused before the judge to be dealt with according to law; and in the same warrant the judge may require the officer to summon such witnesses as are named in the warrant to appear and give evidence at the trial. The warrant may be in the form established by the usage and practice of the issuing court."

This legislation is in response to the Hawaii Supreme court ruling in State v. Corey Thompson. Thompson was charged with abuse of a household or family member in 2016, but the Supreme Court ruled that procedures violated a state statute that requires a signed affidavit from the victim.

There is currently no guidance on how to fix the problem identified in the Supreme Court's ruling. According to the Honolulu Prosecuting Attorney office, since January 2022, over 730 cases have been dismissed, despite the fact that their complaints contain declaratory language that is signed by a deputy prosecutor. Domestic violence, DUI and almost every other type of [petty misdemeanor and misdemeanor case](#) have been adversely affected. **In February, all their domestic violence cases were dismissed.**

A statutory amendment is needed *immediately* to clarify what constitutes a valid complaint. **The uncertainty of having cases dismissed or put on hold could exacerbate the trauma already experienced by survivors of domestic violence** from their victimization and their participation in the criminal justice system.

For these reasons, we are in strong support of HB1541. Thank you for the opportunity to testify on this important matter.

Sincerely,

Angelina Mercado, Executive Director



TO: Chair Karl Rhoads
Vice Chair Jarrett Keohokalole
FR: Nanci Kreidman, M.A.
Chief Executive Officer
RE: H.B. 1541

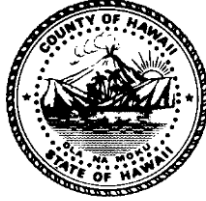
Aloha and thank you for hearing this important Bill. Domestic Violence Action Center submits this testimony in **support** of House Bill 1541, Relating to Criminal Complaints, which seeks to clarify the acceptable procedures for initiating criminal complaints.

Since January 2022, the Supreme Court of the State of Hawaii's ruling in *State v. Thompson* (2021) has resulted in the dismissal of approximately one hundred domestic violence cases statewide, not based on the merits of the case, but solely based on the form of the complaint. It is our understanding that court decisions in these cases have been inconsistent and lack any clear guidance as to how to resolve the issues. It is also our understanding that many other cases, such as Operating a Motor Vehicle Under the Influence of an Intoxicant, Assault, and Sexual Assault, have likewise been dismissed inconsistently, by the hundreds.

House Bill 1541 will update the vague and outdated language currently present in HRS §805-1 by allowing a deputy prosecuting attorney's signature on a complaint to be sufficient for initiating criminal complaints, once they have reviewed the available evidence.

Thank you for your consideration and favorable action on this Bill which holds the promise to make affirmative differences in the lives of survivors suffering the harm of abuse.

Mitchell D. Roth
Mayor



Paul K. Ferreira
Police Chief

Kenneth Bugado, Jr.
Deputy Police Chief

County of Hawai`i

POLICE DEPARTMENT

349 Kapi`olani Street • Hilo, Hawai`i 96720-3998
(808) 935-3311 • Fax (808) 961-8865

March 14, 2022

Senator Karl Rhoads
Chairperson and Committee Members
Committee on Judiciary
415 South Beretania Street, Room 016
Honolulu, Hawai`i 96813

RE : HOUSE BILL 1541, RELATING TO CRIMINAL COMPLAINTS
HEARING DATE : March 15, 2022
TIME : 9:30 A.M.

Dear Senator Rhoads:

The Hawai`i Police Department **strongly supports** House Bill 1541, which seeks to clarify acceptable procedure for initiating criminal complaints. We are in agreement with the Department of the Prosecuting Attorney of the City and County of Honolulu that this measure is necessary to clarify the ambiguous and antiquated language currently found in section 805-1, Hawai`i Revised Statutes (HRS), as amended.

The purpose of this measure is to address the impacts the December 10, 2021, ruling by the Supreme Court of the State of Hawai`i in State vs. Thompson, which was based on the County Prosecutor in the Third Circuit not meeting the statutory requirements to produce a valid criminal complaint in a penal summons case, as laid out in Section 805-1, HRS. As a result of this ruling and the lack of guidance, District and Family Court Judges around the State have been interpreting Thompson broadly, applying the ruling not only to penal summons cases, but other type of cases that were not considered by the Supreme Court in its decision. Therefore, unintended consequences have resulted with motions being filed across the State seeking dismissals of District and Family Court cases to include such crimes as Abuse of Family Household Member, Operating a Motor Vehicle Under the Influence of an Intoxicant, Sexual Assault, Assault, etc.

It is for the reasons stated, that we urge this committee to approve this legislation. Thank you for allowing the Hawai`i Police Department to provide comments relating to House Bill 1541.

Sincerely,

PAUL K. FERREIRA
POLICE CHIEF



**TESTIMONY OF TINA YAMAKI
PRESIDENT
RETAIL MERCHANTS OF HAWAII
March 15, 2022
HB 1541 RELATING TO CRIMINAL COMPLAINTS**

Good morning, Chairperson Rhoads, and members of the Senate Committee on Judiciary. I am Tina Yamaki, President of the Retail Merchants of Hawaii and I appreciate this opportunity to testify.

The Retail Merchants of Hawaii was founded in 1901, RMH is a statewide, not for profit trade organization committed to the growth and development of the retail industry in Hawaii. Our membership includes small mom & pop stores, large box stores, resellers, luxury retail, department stores, shopping malls, local, national, and international retailers, chains, and everyone in between.

We are in strong support of HB 1541 Relating to Criminal Complaints. This measure clarifies acceptable procedure for initiating criminal complaints.

This bill would clarify acceptable procedure for initiating criminal complaints by updating and supplementing certain language under HRS 805-1. It is our understanding that currently there are inconsistent rulings and cases are being dismissed solely based on the form of the complaint and not on the merits of the case.

Retailers are seeing an increase in shoplifting in their stores. Many people who steal are repeat offenders who are part of organized retail crime. In other words, they steal for a living as they feel that that is their job. These offenders often feel that they can get away with their crimes as they are non-violent and they are often not sentenced, fined, or given any consequences by the courts for their actions. As a result, they are right back in our stores stealing again within hours after the court hearing.

Measures like this one will help to stop the loopholes that are in favor of the offender.

We ask that you please pass this measure.

Mahalo for this opportunity to testify.

DAVID Y. IGE
GOVERNOR



TESTIMONY BY:

JADE T. BUTAY
DIRECTOR

Deputy Directors
ROSS M. HIGASHI
EDUARDO P. MANGLALLAN
PATRICK H. MCCAIN
EDWIN H. SNIFFEN

STATE OF HAWAII
DEPARTMENT OF TRANSPORTATION
869 PUNCHBOWL STREET
HONOLULU, HAWAII 96813-5097

March 15, 2022
9:30 A.M
State Capitol, Conference Room 016/Teleconference

H.B. 1541
RELATING TO CRIMINAL COMPLAINTS

Senate Committee on Judiciary

The Department of Transportation (DOT) **supports** H.B. 1541, which clarifies acceptable procedure for initiating criminal complaints.

H.B. 1541 provides a technical fix, that will reestablish appropriate legal language to address prosecution of impaired driving and other criminal offences.

The DOT urges your support for H.B. 1541.

Thank you for the opportunity to provide testimony.