WHEREAS, a principal of our democracy is that all citizens shall be accorded due process and that no person shall be charged with a felony except upon a finding of probable cause, as required by the State of Hawaii and United States Constitutions; and

WHEREAS, prior to 2004, felony cases in Hawaii were initiated either through a preliminary hearing, with a judge making the probable cause determination or by indictment with a grand jury making the probable cause determination; and

WHEREAS, in both procedures, prosecutors are required to present evidence and witness testimony to demonstrate the existence of probable cause; and

WHEREAS, during the Regular Session of 2004, Senate Bill No. 2681 was introduced to allow prosecutors to initiate cases for certain B and C felonies via "information charging"; and

WHEREAS, in cases initiated by information charging, the court bases its probable cause determination on a written declaration by the investigating detective and written statements from the witnesses cited in the declaration; and

WHEREAS, Senate Bill No. 2681 was enacted as Act 62, Session Laws of Hawaii 2004, and became effective upon ratification of an amendment to the Hawaii Constitution allowing felony criminal charges to be initiated by the filing of written information; and

WHEREAS, prior to its enactment, numerous disparate community groups and stakeholders voiced their opposition to the enactment of the bill, including the Office of the Public Defender; the International Longshore and Warehouse Union; the
Japanese American Citizens League of Hawaii; Hawaii Teamsters, Local 996; the League of Women Voters, and the Hawaii Association of Criminal Defense Lawyers; and

WHEREAS, proponents of information charging claim that information charging results in cost savings for the State and the counties by reducing court costs, overtime pay for police officers, and witness fees and spares witnesses from having to make multiple appearances in court; and

WHEREAS, critics of information charging argue that, while information charging might excuse witnesses from testifying at grand jury and preliminary hearings, they are still required to appear in court for proceedings, such as hearings and trial, unrelated to a grand jury or preliminary hearing; and

WHEREAS, critics of information charging also argue that, without the opportunity to see and hear witnesses who testify at a preliminary hearing or to view the record of a grand jury proceeding, defendants have less incentive to enter a plea, resulting in increased demands for pre-trial motions and for trial, placing an additional burden on the courts; and

WHEREAS, critics also argue that information charging deprives the court or grand jury of the opportunity to question witnesses and assess credibility when making their probable cause determinations; and

WHEREAS, in 2008, the Department of the Prosecuting Attorney, City and County of Honolulu, submitted its Final Report regarding information charging to this body; and

WHEREAS, while the Final Report provides statistics on the number of cases initiated by information charging and estimates regarding the number of police officers and witnesses that would have been required to testify before a grand jury or preliminary hearing had information charging not been available, the report does not provide statistics regarding cost savings, such as reduced overtime pay for police officers, that have been achieved because of information charging; and

WHEREAS, the Department of the Prosecuting Attorney, City and County of Honolulu, is presently requesting that three
of offenses be added to the list of criminal offenses that are eligible for processing via information charging; and

WHEREAS, since the passage of Act 62, Session Laws of Hawaii 2004, no independent third-party assessment has been conducted regarding the actual practice of information charging; and

WHEREAS, it is necessary to determine the effects that Act 62, Session Laws of Hawaii 2004, has had on the criminal justice system since its enactment; now, therefore,

BE IT RESOLVED by the House of Representatives of the Twenty-fifth Legislature of the State of Hawaii, Regular Session of 2010, that the Legislative Reference Bureau is requested to conduct a study regarding the effect of information charging on the criminal justice system in the State of Hawaii; and

BE IT FURTHER RESOLVED that this body requests that the matters to be addressed by the study include the following:

(1) The number of cases brought by information charging, preliminary hearing before a judge, and grand jury indictment, respectively, since the passage of Act 62, Session Laws of Hawaii 2004;

(2) The number of cases that were dropped by the Department of the Prosecuting Attorney after an initial charge by information charging, as compared to preliminary hearings and grand jury indictments;

(3) The number of cases brought to trial through information charging, as compared to preliminary hearings and grand jury indictments;

(4) The number of convictions obtained, by plea or verdict, when the case was initiated through information charging;

(5) To what extent, if any, information charging has resulted in cost savings due to reductions in court costs, overtime pay for police officers, and witness fees;
(6) The number of states that presently allow information charging; and

(7) Any other appropriate information; and

BE IT FURTHER RESOLVED that the Judiciary, the Department of the Attorney General, the Department of the Prosecuting Attorney of each county, the Office of the Public Defender, and the Police Departments of each county are requested to cooperate with the Legislative Reference Bureau by furnishing all data, information, and recommendations requested by the Legislative Reference Bureau; and

BE IT FURTHER RESOLVED that the Legislative Reference Bureau is requested to submit a report of its findings to this body no later than twenty days prior to the convening of the regular session of 2011; and

BE IT FURTHER RESOLVED that certified copies of this Resolution be transmitted to the Chief Justice of the Supreme Court, the Attorney General, the Prosecuting Attorney of each county, the state Public Defender, the Chief of Police of each county, and the Director of the Legislative Reference Bureau.

OFFERED BY:

[Signatures]

[Date: Mar 10, 2010]