

MAR 10 2010

SENATE CONCURRENT RESOLUTION

REQUESTING THE LEGISLATIVE REFERENCE BUREAU TO CONDUCT A STUDY
REGARDING THE EFFECT OF INFORMATION CHARGING ON THE
CRIMINAL JUSTICE SYSTEM IN THE STATE OF HAWAII.

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

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

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

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

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

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

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1 WHEREAS, prior to its enactment, numerous disparate
2 community groups and stakeholders voiced their opposition to the
3 enactment of the bill, including the Office of the Public
4 Defender; the International Longshore and Warehouse Union; the
5 Japanese American Citizens League of Hawaii; Hawaii Teamsters,
6 Local 996; the League of Women Voters, and the Hawaii
7 Association of Criminal Defense Lawyers; and
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9 WHEREAS, proponents of information charging claim that
10 information charging results in cost savings for the State and
11 the counties by reducing court costs, overtime pay for police
12 officers, and witness fees and spares witnesses from having to
13 make multiple appearances in court; and
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15 WHEREAS, critics of information charging argue that, while
16 information charging might excuse witnesses from testifying at
17 grand jury and preliminary hearings, they are still required to
18 appear in court for proceedings, such as hearings and trial,
19 unrelated to a grand jury or preliminary hearing; and
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21 WHEREAS, critics of information charging also argue that,
22 without the opportunity to see and hear witnesses who testify at
23 a preliminary hearing or to view the record of a grand jury
24 proceeding, defendants have less incentive to enter a plea,
25 resulting in increased demands for pre-trial motions and for
26 trial, placing an additional burden on the courts; and
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28 WHEREAS, critics also argue that information charging
29 deprives the court or grand jury of the opportunity to question
30 witnesses and assess credibility when making their probable
31 cause determinations; and
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33 WHEREAS, in 2008, the Department of the Prosecuting
34 Attorney, City and County of Honolulu, submitted its Final
35 Report regarding information charging to the Legislature; and
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37 WHEREAS, while the Final Report provides statistics on the
38 number of cases initiated by information charging and estimates
39 regarding the number of police officers and witnesses that would
40 have been required to testify before a grand jury or preliminary
41 hearing had information charging not been available, the report
42 does not provide statistics regarding cost savings, such as
43 reduced overtime pay for police officers, that have been
44 achieved because of information charging; and



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WHEREAS, the Department of the Prosecuting Attorney, City and County of Honolulu, is presently requesting that three 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 Senate of the Twenty-fifth Legislature of the State of Hawaii, Regular Session of 2010, the House of Representatives concurring, 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 the Legislature 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;



1 (5) To what extent, if any, information charging has
2 resulted in cost savings due to reductions in court
3 costs, overtime pay for police officers, and witness
4 fees;

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6 (6) The number of states that presently allow information
7 charging; and

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9 (7) Any other appropriate information; and

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

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

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

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OFFERED BY:

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