

**HB840**

**HD1**

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**Testimony of the Office of the Public Defender  
State of Hawaii  
to the Senate Committee on Judiciary and Government Operations**

March 16, 2010

H.B. No. 840, HD1: RELATING TO CHARGING BY WRITTEN INFORMATION.

Senator Taniguchi and Members of the Committee:

H.B. 840, HD1 proposes to add three offenses to the Felony Information statute, §§801-81 - 806-88. We note that these are offenses were enacted into law after the Felony Information procedure was made part of our law.

Only eleven other states use information charging, also known as “direct file”, and some in very different forms than we have in Hawaii. Some states require court permission for “direct file” charging; other states have built in balancing protections such as allowing depositions. None of these provisions are part of our law in Hawaii and were largely determined to be too expensive for our court budgets. Additionally, because “direct file” makes it easier to bring criminal charges, some states reported an increase in the number of charges brought with additional burdens on the various parts of the criminal justice system. If additional resources are needed as a result of this constitutional change, taxpayers have to pay for them. Significantly, large states with the highest number of cases have not chosen to use “direct file” because they determined that it would not save money or time and would not benefit their justice systems.

A person charged with a felony offense has to post bail which is currently set in the range of \$11,000.00 and higher. A person who cannot afford to post bail has to wait in jail for approximately three weeks until the court can schedule a hearing on a release request. That delay often results in the loss of jobs and housing. It has long been a basic principle of our Constitution that putting someone in that kind of jeopardy should require sworn testimony of a witness before a Grand Jury or a judge. Information charging eliminates this important safeguard.

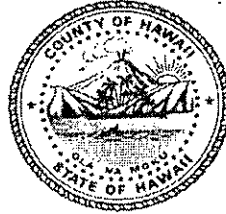
With information charging, no live witness appears before anyone. There is no opportunity to question the witness or seek clarification. A judge simply reviews paperwork provided by a police officer and does not even routinely review statements signed by witnesses.

Given the inherent limitations of the information charging process, we do not support expansion of the statute to include additional offenses. For these reasons, we oppose this proposed legislation.

Thank you for the opportunity to comment on this bill.

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OFFICE OF THE PROSECUTING ATTORNEY

**Testimony In Support of HB 840, HD1  
Relating to Charging By Written Information**

Hearing before Senate Committee on Judiciary and Government Operations  
Tuesday, March 16, 2010  
9:30 a.m.  
State Capitol, Room 016

Submitted by Jay T. Kimura, Prosecuting Attorney

**TO: Chair Taniguchi and Committee Members:**

**We support House Bill No. 840, Information Charging –Adding Offenses of Unauthorized Entry into Dwelling; Unauthorized Possession of Confidential Personal Information; Methamphetamine Trafficking Second Degree.**

The Office of the Prosecuting Attorney fully endorses the proposed amendment to the Hawai'i Revised Statutes, "HRS", and Section 806-83 to allow charging of three offenses that were created after the information charging law went into effect.

Information charging was instituted in 2004 to streamline the criminal justice system by allowing the charging of these felonies by submitting documents setting forth probable cause to a judge, rather than requiring witnesses to come to court to testify. Use of information charging has spared numerous witnesses the necessity of having to appear before a grand jury or at a preliminary hearing. In these tight fiscal times, it is important to note that information charging has eliminated the need to pay witness fees for these witnesses and alleviated the need to have police officers waiting at court to testify, thus sparing police resources and enhancing community safety.

Three felonies (Unauthorized Entry in a Dwelling, Unauthorized Possession of Confidential Personal Information, and Methamphetamine Trafficking in the Second Degree) are being added by this bill. These offenses were created after the information charging statutes were passed, so they were not included in the original list of offenses. They are similar to offenses currently on the list of felonies eligible for information

charging so there is no reason they should not be included.

“The impact of information charging on the judicial system has been dramatic,” Honolulu Prosecuting Attorney Peter Carlisle said. The cost saving for the courts, police and private citizens and their employers has been enormous. Also significant is the emotional relief, reduction of stress, and time saved by civilian victims and witnesses who were spared from going to court to testify. Information charging has proved to be an impressively successful innovation in Hawaii’s criminal justice system.”

Defendants are protected under the current law because any clearly exculpatory evidence must be presented by the prosecutor to the judge determining probable cause of the information charging pleadings. Section 806-84(c), HRS. In cases such as Unauthorized Entry into Dwelling and Unauthorized Possession or Unauthorized Possession of Confidential Personal Information, the prosecutor would include information establishing defendant’s claim that he had “consent.” Claims that evidence was illegally seized in Methamphetamine Trafficking Offenses are preserved by the defendant under the current law as well.

For the reasons stated, the proposed change in the law will support fair and effective use of resources of government, victims and witnesses, while protecting the rights of the defendant. Thank you for considering our recommendation to adopt this bill.