

Honolulu, Hawaii

MAR 21 2013

RE: H.B. No. 1059
H.D. 2
S.D. 1

Honorable Donna Mercado Kim
President of the Senate
Twenty-Seventh State Legislature
Regular Session of 2013
State of Hawaii

Madam:

Your Committee on Transportation and International Affairs,
to which was referred H.B. No. 1059, H.D. 2, entitled:

"A BILL FOR AN ACT RELATING TO COURT ADVISEMENT CONCERNING
ALIEN STATUS,"

begs leave to report as follows:

The purpose and intent of this measure is to protect the
rights of aliens in criminal proceedings in state courts by
informing the alien defendant of the possible consequences to
entering a guilty plea and its impact on the alien's admission to
the United States.

Your Committee received testimony in support of this measure
from the Federal Public Defender, Department of the Attorney
General, Office of the State Public Defender, County of Maui
Prosecuting Attorney, Honolulu Prosecuting Attorney, and two
individuals. Your Committee received comments on this measure
from the Judiciary.

Your Committee finds that the current language of section
802E-2, Hawaii Revised Statutes, relating to court advisement
concerning alien status, was enacted in 1988 and has not been
amended since then. Your Committee further finds that a United
Supreme Court case (*Padilla v. Kentucky*, 559 U.S. 356 (2010)), and
a Ninth Circuit Court of Appeals case (*Nunes-Reyes v. Holder*, 646
F.3d. 684 (2011)) requires that section 802E-2, Hawaii Revised
Statutes, be updated to conform to current federal court holdings.



Furthermore, the current language is not consistent with Rule 11(c)(5) of the Hawaii Rules of Penal Procedure. This measure updates the current federal law and remedies those inconsistencies.

Section 802E-1, Hawaii Revised Statutes, states: "The legislature finds that in many instances involving an individual who is not a citizen of the United States charged with an offense punishable as a crime under state law, a plea of guilty or nolo contendere is entered without the defendant knowing that a conviction of such offense is grounds for deportation, exclusion from admission to the United States, or denial of naturalization pursuant to the laws of the United States."

Your Committee is concerned that there are a number of aliens who come before the criminal courts whose immigration status may be affected by the outcome of their case.

Your Committee has amended this measure by:

- (1) Repealing the existing section 802E-2, Hawaii Revised Statutes, and inserting a new section to chapter 802E, Hawaii Revised Statutes, in its place, in the interest of enhancing readability and as recommended by the Department of the Attorney General;
- (2) Inserting language in the new section requiring the advisement to be administered prior to the arraignment and plea hearing, as recommended by the Office of the Public Defender; and
- (3) Making technical, nonsubstantive amendments for the purposes of clarity and consistency.

As affirmed by the record of votes of the members of your Committee on Transportation and International Affairs that is attached to this report, your Committee is in accord with the intent and purpose of H.B. No. 1059, H.D. 2, as amended herein, and recommends that it pass Second Reading in the form attached hereto as H.B. No. 1059, H.D. 2, S.D. 1, and be referred to the Committee on Judiciary and Labor.



Respectfully submitted on
behalf of the members of the
Committee on Transportation and
International Affairs,




J. KALANI ENGLISH, Chair



The Senate
 Twenty-Seventh Legislature
 State of Hawai'i

Record of Votes
Committee on Transportation and International Affairs
TIA

Bill / Resolution No.:*	Committee Referral:	Date:		
HB 1059, HD2	TIA, JDL	3-18-13		
<input type="checkbox"/> The committee is reconsidering its previous decision on this measure. If so, then the previous decision was to: _____				
The Recommendation is: <input type="checkbox"/> Pass, unamended 2312 <input checked="" type="checkbox"/> Pass, with amendments 2311 <input type="checkbox"/> Hold 2310 <input type="checkbox"/> Recommit 2313				
Members	Aye	Aye (WR)	Nay	Excused
ENGLISH, J. Kalani (C)	✓			
DELA CRUZ, Donovan M. (VC)				✓
ESPERO, Will	✓			
GABBARD, Mike	✓			
KAHELE, Gilbert	✓			
KEITH-AGARAN, Gilbert S.C.	✓			
KOUCHI, Ronald D.	✓			
SOLOMON, Malama				✓
SLOM, Sam	✓			
TOTAL	7	-	-	2
Recommendation: <input checked="" type="checkbox"/> Adopted <input type="checkbox"/> Not Adopted				
Chair's or Designee's Signature: 				
Distribution: Original Yellow Pink Goldenrod File with Committee Report Clerk's Office Drafting Agency Committee File Copy				

*Only one measure per Record of Votes