

Honolulu, Hawaii

APR 05 2013

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

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

Madam:

Your Committee on Judiciary and Labor, to which was referred  
H.B. No. 1059, H.D. 2, S.D. 1, 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 Department of the Attorney General; Office of the Public  
Defender; Department of the Prosecuting Attorney, City and County  
of Honolulu; and Department of the Prosecuting Attorney, County of  
Maui. Testimony in opposition to this measure was submitted by  
the Judiciary.

Your Committee finds that the existing 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.



The court advisement under section 802E-2, Hawaii Revised Statutes, does not adequately advise a defendant of the defendant's Sixth Amendment right to competent and specific advice on immigration consequences of a criminal conviction. Furthermore, the existing 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.

Your Committee notes the testimony submitted by the Office of the Public Defender that suggests that the advisement be read twice: at the defendant's arraignment and plea hearing prior to the entry of a guilty or no contest plea and prior to the commencement of trial. The Office testified that providing a warning at the arraignment and plea hearing will provide the defendant sufficient time to consult with an attorney regarding the potential impacts a conviction or deferral may have on the defendant's immigration status before entering a plea at trial.

Your Committee further notes the concerns raised in written testimony submitted by the Judiciary. At the end of the hearing on this measure, your Committee requested that the Judiciary and the Office of the Public Defender work together to develop language to address the Judiciary's concerns and establish requirements to advise a defendant twice.

Accordingly, your Committee has amended this measure by adopting the language developed by the Office of the Public Defender and Judiciary that:

- (1) Amends the new section added to chapter 802E, Hawaii Revised Statutes, to require the court to administer a specific advisement to a defendant at the commencement of the court session for arraignment and plea hearing;
- (2) Reinstates the language under section 802E-2, Hawaii Revised Statutes, and amends it further by amending the advisement the court is required to administer to the defendant prior to the commencement of trial, entry of a plea of guilty or nolo contendere, or an admission of guilt or sufficient facts;
- (3) Makes conforming amendments to section 802E-3, Hawaii Revised Statutes, to reflect the additional advisement

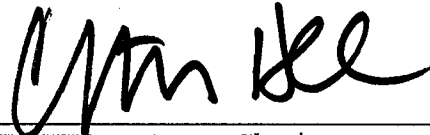


required at the commencement of arraignment and plea hearing; and

- (4) Makes technical, nonsubstantive amendments for the purposes of clarity and consistency.

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

Respectfully submitted on  
behalf of the members of the  
Committee on Judiciary and  
Labor,



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CLAYTON HEE, Chair



The Senate  
 Twenty-Seventh Legislature  
 State of Hawai'i

**Record of Votes**  
**Committee on Judiciary and Labor**  
**JDL**

Bill / Resolution No.:* <b>HB1059, HD2, SD1</b>	Committee Referral: <b>TIA, JDL</b>	Date: <b>4/3/13</b>		
<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
HEE, Clayton (C)	✓			
SHIMABUKURO, Maile S.L. (VC)	✓			
GABBARD, Mike	✓			
IHARA, Jr., Les	✓			
SLOM, Sam	✓			
<b>TOTAL</b>	<b>5</b>			
Recommendation: <input checked="" type="checkbox"/> Adopted <input type="checkbox"/> Not Adopted				
Chair's or Designee's Signature:				
<b>Distribution:</b> Original     Yellow     Pink     Goldenrod File with Committee Report     Clerk's Office     Drafting Agency     Committee File Copy				

\*Only one measure per Record of Votes