

Honolulu, Hawaii

February 19, 2016

RE: H.B. No. 2561  
H.D. 1

Honorable Joseph M. Souki  
Speaker, House of Representatives  
Twenty-Eighth State Legislature  
Regular Session of 2016  
State of Hawaii

Sir:

Your Committee on Judiciary, to which was referred H.B. No. 2561 entitled:

"A BILL FOR AN ACT RELATING TO THE ADMINISTRATION OF JUSTICE,"

begs leave to report as follows:

The purpose of this measure is to implement recommendations made by the Penal Code Review Committee.

Specifically, this measure amends various chapters of the Hawaii Penal Code and makes conforming amendments to several related statutes outside the penal code.

The Department of Health and the Sex Abuse Treatment Center submitted testimony in support of the measure.

The Coalition for a Drug-Free Hawaii submitted testimony in support of the measure with reservations.

The Department of the Prosecuting Attorney of the City and County of Honolulu and one individual submitted testimony in support of the measure with amendments.

The Attorney General, Crime Victim Compensation Commission, and Office of the Prosecuting Attorney of the County of Kauai submitted testimony in general support of the measure, but in opposition to specific parts of the measure.



The White Collar Crime Unit of the Department of the Prosecuting Attorney of the City and County of Honolulu opposed the amendments to section 708-893, Hawaii Revised Statutes, contained in section 42 of this measure.

The Police Department of the City and County of Honolulu opposed the amendments to the following statutes:

- (1) Section 708-831, Hawaii Revised Statutes, contained in section 37 of the measure;
- (2) Section 708-893, Hawaii Revised Statutes, contained in section 42 of the measure;
- (3) Section 712-1240.7, Hawaii Revised Statutes, contained in section 52 of the measure; and
- (4) Section 712-1240.8, Hawaii Revised Statutes, contained in section 56 of the measure.

Two individuals submitted testimony in opposition to the measure.

Your Committee finds that this measure reflects the significant and thorough work of the Penal Code Review Committee, which was established pursuant to House Concurrent Resolution No. 155, S.D. 1 (2015). After evaluating the Hawaii Penal Code, as well as other related statutes, the Penal Code Review Committee made eighty-four recommendations that were adapted into the current measure, which is composed of more than seventy sections.

The Report of the Penal Code Review Committee was submitted to the Legislature on December 31, 2015, and contains analysis and rationale for each recommendation. It is your Committee's intent that the Report of the Penal Code Review Committee should be considered as an attachment to this committee report. A copy of the Report of the Penal Code Review Committee is available at: [http://www.courts.state.hi.us/docs/news\\_and\\_reports docs/2015 PENAL CODE REVIEW REPORT-FINAL-12-30-15.pdf](http://www.courts.state.hi.us/docs/news_and_reports/docs/2015_PENAL_CODE_REVIEW_REPORT-FINAL-12-30-15.pdf).

Your Committee notes that, during a public hearing, the amendments made to various theft statutes in Part V of the measure drew a great deal of attention and bear highlighting. In particular, the long-overdue increases in the monetary thresholds for the offenses of theft in the second degree, theft in the third



degree, shoplifting, and theft of utility services were quite controversial. It is nonetheless undisputed that Hawaii's felony theft threshold was last increased in 1986. As a result, Hawaii currently has the fifth-lowest felony theft threshold in the country. When the high cost of living in Hawaii is factored in, the true value of the threshold is even lower.

Your Committee also finds that the Penal Code Review Committee's comments on the theft statutes are located on pages 45 to 51 of their report and specifically address concerns raised about the recommended threshold increases:

The Committee acknowledges concerns raised by the business community that raising the felony theft threshold will cause an increase in losses caused by professional shoplifters and savvy offenders, as well as concerns by the prosecutors regarding losing the potential deterrent effect of the lower threshold \$300 figure. These offenders seek to avoid serious punishment by consciously stealing merchandise valued at just under the felony threshold. To address these concerns and ensure that professional thieves are adequately deterred, the increase in the felony theft threshold is coupled with a proposal to amend the habitual property crime statute to target professional property criminals and make it more effective in prosecuting and deterring such repeat offenders.

Your Committee also finds that the theft threshold amendments were not proposed by the Penal Code Review Committee without consideration of the repeat, or habitual, thief. The Penal Code Review Committee accordingly proposed increases to the habitual property crimes statutes. These amendments incorporate more repeat theft offenders in the definition of "habitual property crime perpetrator," retain the trigger for prior offenses at any combination of three misdemeanor or felony theft convictions, double the look-back period for prior theft convictions from five years to ten years so that repeat offenders will be held more accountable, and clarify that no state of mind must be proven for the court to determine whether an offender has committed previous theft crimes.

Your Committee also notes that another part of the measure that produced extensive discussion at the public hearing was a proposed statutory amendment regarding the offense of use of a computer in the commission of a separate crime. This amendment



repeals a provision that subjects a person to a separate charge and enhanced penalty for using a computer to commit an underlying theft crime. The Penal Code Review Committee commented, on page 51 of its report:

Currently, the enhanced penalties for use of a computer in the commission of a separate crime converts first-degree theft into a class A felony and second-degree theft into a class B felony. The definition of "computer" for purposes of this section would appear to include devices such as smartphones. Given the prevalence of such devices and the widespread use of "computers" in today's society in general, imposing the enhanced penalties for the use of a computer in committing theft seems unduly harsh.

Your Committee further notes that another topic that generated discussion at the public hearing was the proposed statutory amendments to the methamphetamine trafficking offenses in Chapter 712, Hawaii Revised Statutes. These amendments remove possession and distribution of methamphetamine from the methamphetamine trafficking statutes, conviction of which requires mandatory incarceration. Instead, the measure places possession and distribution of methamphetamine in the statutes relating to promoting a dangerous drug, which gives the court the discretion to impose probation and drug treatment when appropriate. The offenses remaining in the methamphetamine trafficking statute are distribution of methamphetamine to a minor and manufacturing of methamphetamine, which remain class A felonies. The Penal Code Review Committee commented, on page 59 of its report, that "[w]hile the Committee recognizes these dangers and challenges, it is of the opinion that the current Methamphetamine Trafficking statutes are not properly addressing those challenges and should be changed based on the experience of the Committee regarding the application of these provisions in the criminal justice system in Hawaii."

Your Committee amended this measure by changing the effective date to March 15, 2038, to facilitate further discussion on the measure.

As affirmed by the record of votes of the members of your Committee on Judiciary that is attached to this report, your Committee is in accord with the intent and purpose of H.B. No. 2561, as amended herein, and recommends that it pass Second



Reading in the form attached hereto as H.B. No. 2561, H.D. 1, and  
be referred to your Committee on Finance.

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

*Karl Rhoads*

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KARL RHOADS, Chair



