

STAND. COM. REP. NO. |

Honolulu, Hawaii

FEB 01 2023

RE: S.B. No. 36

Honorable Ronald D. Kouchi
President of the Senate
Thirty-Second State Legislature
Regular Session of 2023
State of Hawaii

Sir:

Your Committee on Judiciary, to which was referred S.B. No. 36 entitled:

"A BILL FOR AN ACT RELATING TO THE INITIATION OF FELONY PROSECUTIONS,"

begs leave to report as follows:

The purpose and intent of this measure is to:

- (1) Specify that a person may be tried and sentenced for certain alleged felony offenses through the complaint and preliminary hearing process, indictment by grand jury, or by written information; and
- (2) Specify that multiple attempts to initiate a felony prosecution for the same offense, either through the same initial charging method or an alternative method, or in different forums, shall not be permitted, except in certain circumstances.

Your Committee received testimony in support of this measure from the Department of the Attorney General, Department of the Prosecuting Attorney of the City and County of Honolulu, Office of the Prosecuting Attorney of the County of Hawai'i, Office of the Prosecuting Attorney of the County of Kauai, and Department of the Prosecuting Attorney of the County of Maui. Your Committee received testimony in opposition to this measure from one



individual. Your Committee received comments on this measure from the Office of the Public Defender.

Your Committee finds that on September 8, 2022, the Hawaii Supreme Court issued its decision in the *State v. Obrero*, 151 Hawai'i 472, 517 P. 3d 755 (2022), construing section 801-1, Hawaii Revised Statutes, to invalidate the longstanding practice of initiating prosecution of felony cases by complaint upon a finding of probable cause after a preliminary hearing. For the last forty years, article I, section 10, of the Hawaii State Constitution has stated, in part, that "[n]o person shall be held to answer for a capital or otherwise infamous crime, unless on a presentment or indictment of a grand jury or upon a finding of probable cause after a preliminary hearing held as provided by law or upon information in writing signed by a legal prosecuting officer..." (emphasis added). As a result, the Hawaii State Constitution has been interpreted to allow prosecutors to initiate a prosecution by complaint upon a judge's finding of probable cause after a preliminary hearing, by obtaining a grand jury indictment, or, if eligible, by written information pursuant to chapter 806, Hawaii Revised Statutes.

Your Committee further finds that repeated attempts at initiating prosecution of the same felony offense by presenting the same evidence to both a grand jury and judge, or returning to the same forum, is not contemplated by the Hawaii State Constitution. Whether by presenting the allegations to a different grand jury after a prior grand jury did not find sufficient evidence for an indictment, or by using both the grand jury and preliminary hearing processes after the first forum rejected the evidence, the prosecution should not have multiple opportunities to present the same evidence in hopes of achieving a different outcome. This measure allows for the initiation of felony criminal charges via preliminary hearing and prohibits multiple attempts at charging the same felony case using different methods, with exceptions.

Your Committee notes that this measure represents a months-long discussion and working draft during the interim following the issuance of the *Obrero* opinion. Feedback was solicited from many parties, including the Department of the Attorney General, the Office of the Public Defender, and the four county prosecutors to bring about the measure's language. This



measure is therefore a compromise that achieves the principal goal of clarifying that felony prosecutions can be initiated by use of the preliminary hearing process.

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 S.B. No. 36 and recommends that it pass Second Reading and be placed on the calendar for Third Reading.

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



KARL RHOADS, Chair



