

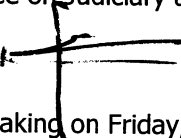
The Senate  
State of Hawaii

STATE CAPITOL

HONOLULU, HAWAII 96813

March 16, 2006

TO: Members of the Senate Committee on Judiciary and Hawaiian Affairs

FROM: Sen. Colleen Hanabusa, Chair 

SUBJECT: Chair's inclinations for decision making on Friday, March 17, 9:00 a.m.

**The following measures were previously heard on Monday, March 13:**

Bill NO.	Description	Referral
HB 2476 (HSCR447-06)	RELATING TO STATUTORY REVISION: AMENDING, REENACTING, OR REPEALING VARIOUS PROVISIONS OF THE HAWAII REVISED STATUTES AND THE SESSION LAWS OF HAWAII FOR THE PURPOSE OF CORRECTING ERRORS AND REFERENCES, CLARIFYING LANGUAGE, AND DELETING OBSOLETE OR UNNECESSARY PROVISIONS. Amends, reenacts, or repeals various provisions of the Hawaii Revised Statutes and the Session Laws of Hawaii for the purpose of correcting errors and references, clarifying language, and deleting obsolete or unnecessary provisions. <b>Chair's inclination: Pass As Is.</b> The Committee Report will note that the bill contains very minor technical errors which need not be corrected because the Acting Director of the Legislative Reference Bureau indicated that the changes could be done through the revisor of statutes.	JHW
HB 2625 HD1 (HSCR744-06)	RELATING TO UNIFORM STATE LAWS. Appropriates funds for travel expenses of the state commissioners to the National Conference of Commissioners on Uniform State Laws. (HB2625 HD1) <b>Chair's inclination: SD1</b> – Amend to include an appropriation of \$57,500 in accordance with testimony received from Hawaii's Commission to Promote Uniform Legislation, members of which belong to the National Conference of Commissioners on Uniform State Laws.	JHW, WAM
HB 2277 HD2 (HSCR742-06)	MAKING APPROPRIATIONS FOR CLAIMS AGAINST THE STATE, ITS OFFICERS, OR ITS EMPLOYEES. Provides for the authorization and payment of claims against the State for judgments, settlements, and other miscellaneous payments. (HB2277 HD2) <b>Chair's inclination: Defer to Tuesday, March 21, 2006 at 9:00 a.m. in CR 229.</b> Additional time is being provided because the Attorney General testified that his office is in the process of settling a class action lawsuit and would like this Committee to review proposed language pertaining to this settlement to be included in this bill.	JHW, WAM

HB 2278 HD1 (HSCR895-06)	<b>MAKING EMERGENCY APPROPRIATIONS FOR THE DEPARTMENT OF THE ATTORNEY GENERAL.</b> Makes an appropriation out of the general fund to be deposited into the DNA registry special fund. Makes an appropriation out of the DNA registry special fund to pay for costs associated with the implementation of Act 112, SLH 2005. Appropriates monies out of the general fund to pay for costs associated with the implementation of Act 133, SLH 2005. (HB2278 HD1) <b>Chair's inclination: SD1</b> – Amend to: 1) include \$97,992 for the Judiciary's costs in collection of DNA buccal swab samples in accordance with testimony received from the Judiciary and 2) include the following sums for the emergency appropriation for DNA testing requested by the Attorney General: \$186,620 for the purchase of buccal swab collection kits and for mailing costs; \$191,500 for costs related to collecting buccal swab samples (with the Judiciary's cost, this total is \$289,492); and \$836,247 for costs related to analyzing the samples collected for a total appropriation of \$1,312,359 for the DNA registry special fund and an appropriation of \$1,076,217 for sexual assault services.	JHW, WAM
HB 2282 HD1 (HSCR815-06)	<b>RELATING TO CHAPTER 846E.</b> Amends the definition of "repeat covered offender," to expressly except conviction of multiple counts within a single charging document. Adds conviction for a covered offense, unless incarcerated, and released on probation as events requiring a covered offender to register with the attorney general. Clarifies that the prosecuting agency that prosecuted the covered offender for the most recent covered offense within the State must represent the State in any civil proceeding to terminate public access. (HB2282 HD1) <b>Chair's inclination: SD1</b> – Amend to: 1) require the attorney general to handle the civil proceeding when a covered offender seeks termination of public access in accordance with the testimony received from the Office of the Public Defender; and include the recommendation of the Attorney General to 2) restore the requirement that a covered offender required to register under the sex offender registration law notify the Attorney General if the offender has been absent from the offender's registered residence for ten or more days and has failed to establish a new residence and report to a police station by the last day of every month until a new residence is established and registered, and disclose where the offender has slept in the previous month; 3) restore the failure to meet the above reporting requirements in the offense of failure to comply with covered offender registration requirements; 4) change the effective date from July 1, 2069 to July 1, 2006 and 5) make technical non-substantive amendments.	JHW

HB 2299  
HD1  
(HSCR664-  
06)

RELATING TO CHAPTER 803.

JHW

Requires merely substantial compliance with the requirements of statute when police enter a home to arrest a person suspected of a crime. (HB2299 HD1)

**Chair's inclination: SD1** – Amend to stipulate specific requirements for entering a house to make an arrest because the State constitution affords greater protection for privacy than the federal constitution and federal caselaw acknowledges the long-standing common law principle of knock and announce. The bill was amended to 1) require the law enforcement officer or person making an arrest to knock on the door, demand entrance by stating in a loud voice, "Police. We have a warrant. Open the door" or in the case in which arrest is lawful without warrant, the officer or person shall state in a loud voice, "Police. Open the door."; 2) add a provision that the officer or person shall wait a reasonable amount of time before inferring constructive refusal to enter; 3) explain that in determining a reasonable amount of time various factors shall be considered including (a) the size and layout of the residence, (b) the time of day, (c) the nature of the suspected offense, (d) the evidence demonstrating guilt, (d) the officers' other observations that would support forced entry; and (e) any exigent circumstances; 4) delete the provision allowing the law enforcement officer or person making an arrest to substantially comply with the requirements; and 5) change the effective date from July 1, 2069 to July 1, 2006. The Committee report will note that the United States Supreme Court's decision in Wilson v. Arkansas, 514 U.S. 927 (1995) explained how the common-law knock and announce principle was woven quickly into the fabric of early American law. Thus, the court concluded that the common-law knock and announce principle forms a part of the Fourth Amendment reasonableness inquiry. The court further stated the following: "Given the longstanding common-law endorsement of the practice of announcement, we have little doubt that the Framers of the Fourth Amendment thought that the method of an officer's entry into a dwelling was among the factors to be considered in assessing the reasonableness of a search or seizure. Contrary to the decision below, we hold that in some circumstances an officer's unannounced entry into a home might be unreasonable under the Fourth Amendment." Although the court goes on to state that "reasonableness should not be read to mandate a rigid rule of announcement," the stronger protection for privacy under the State Constitution should require specific requirements in accordance with the proposed amendments in this bill. The Committee report will further note that the Ninth Circuit Court of Appeals decision in US v. Chavez-Miranda, 306 F.3d 973 (2002) is the basis for the provision to wait a reasonable amount of time and the factors that should be considered in determining reasonableness.

HB 2303  
HD1  
(HSCR151-  
06)

RELATING TO CHILD SUPPORT ENFORCEMENT.

JHW, WAM

Allows income withholding to continue when current child support ends where there are outstanding arrears for cases in which Child Support Enforcement Agency (CSEA) services are being provided. Authorizes CSEA to adopt administrative rules as necessary to implement income withholding requirements. (HB2303 HD1)

**Chair's inclination: Pass As Is.**

HB 2207 HD1 (HSCR150-06)	<b>RELATING TO SEXUAL ASSAULT.</b> Amends the law defining continuous sexual assault of a minor to permit the jury to convict if it is unanimous in finding that defendant committed at least three prohibited acts, even if it can not unanimously agree which 3 acts constitute the offense. (HB2207 HD1) <b>Chair's inclination: SD1</b> – Technical, non-substantive amendments.	JHW
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**The following measures were previously heard on Tuesday, March 14:**

Bill NO. GM 259	<b>Description</b> Submitting for consideration and confirmation to the Correctional Industries Advisory Committee, Gubernatorial Nominee, DENISE J. JOHNSTON, for a term to expire 6-30-2010. <b>Chair's inclination: Advise and Consent.</b> The Committee Report will note that the Attorney General determined that the nominee who is a PSD ACO lieutenant at OCCC can serve as a member of Correctional Industries Advisory Committee (CIAC), as long as the responsibility of the CIAC as stated in HRS 345D-5 continues to be only "to advise PSD of the feasibility of establishing venture agreements with private sector businesses to utilize the services of qualified, able-bodied inmates" and Ms. Johnston's work assignments do not require her to interact with the CI program or its Administrator.	Referral JHW
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HB 2540 HD2 (HSCR743-06)	<b>MAKING AN APPROPRIATION FOR INCREASING STIPENDS FOR VOLUNTEER PRECINCT OFFICIALS.</b> Makes an appropriation to increase volunteer precinct official stipends. (HB2540 HD2) <b>Chair's inclination: SD1</b> – Amend to include an appropriation of \$96,542 in accordance with testimony provided by the Office of Elections. The Committee report will clarify that the precinct officials are volunteers and the stipend is not to be considered a salary but to reimburse volunteer precinct officials their out-of-pocket expenses.	JHW, WAM
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HB 2900 (HSCR449-06)	<b>RELATING TO ELECTRONIC VOTING.</b> Clarifies that, when using electronic voting machines, either a paper receipt or a voter verifiable paper audit trail that contains just a record of the voter's ballot selections may be used to verify a voter's vote. Allows the voter verifiable paper audit trail to be used to assess the accuracy of the voting machine's electronic record and to verify the election results. <b>Chair's inclination: Pass As Is.</b>	JHW
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<p>HB 1917 HD2 (HSCR871-06)</p>	<p>PROPOSING AMENDMENTS TO THE HAWAII CONSTITUTION RELATING TO THE ESTABLISHMENT OF A SALARY COMMISSION.</p> <p>Proposes a constitutional amendment to establish a salary commission to review and make recommendations for the salaries of justices, judges, state legislators, the governor, the lieutenant governor, administrative director, and state executive branch department heads or executive officers and the deputies or assistants to the department heads, excluding the University of Hawaii and the Department of Education. (HB1917 HD2)</p> <p><b>Chair's inclination: SD1</b> – Amend to: 1) correlate with changes recommended for HB 1918, HD1 requiring the salary commission to submit its recommendations not later than the fortieth legislative day of the 2008 regular session and every six years thereafter; and 2) delete the defective effective date and insert that this amendment shall take effect upon compliance with article XVII, section 3, of the state constitution.</p>	<p>JHW, WAM</p>
<p>HB 1918 HD1 (HSCR856-06)</p>	<p>RELATING TO COMMISSION ON SALARIES.</p> <p>Pursuant to a proposed constitutional amendment, establishes a commission on salaries to recommend the salary of the governor, lieutenant governor, the members of the legislature, justices and judges of all state courts, the administrative director of the State or an equivalent position, and the department heads or executive officers and the deputies or assistants to the department heads of all state departments. (HB1918 HD1)</p> <p><b>Chair's inclination: SD1</b> – Amend to: 1) require the salary commission to convene in the month of November 2006, and every six years thereafter; 2) require the salary commission to submit a report of its findings and its salary recommendations not later than the fortieth legislative day of the 2008 regular session and every six years thereafter; 3) provide that the salary commission's reconvening following a legislative disapproval shall not toll the six-year cycle; 4) include an appropriation of \$50,000 and 5) make technical, non-substantive amendments. The Committee report will note that the salary commission should have discretion to allow for graduated salary increases tied to the cost of living.</p>	<p>JHW, WAM</p>
<p>HB 1233 HD1 (HSCR652-06)</p>	<p>RELATING TO CIVIL RIGHTS.</p> <p>Prohibits discrimination in public accommodations on the basis of sexual orientation. (HB1233 HD1)</p> <p><b>Chair's inclination: SD1</b> – Amend to: 1) insert a purpose section to clarify that this bill would make state civil rights laws uniform by prohibiting discriminatory practices in public accommodations on the basis of sexual orientation and to further clarify that gender identity or expression is prohibited sex discrimination; 2) add a definition for gender identity or expression; and 3) provide that discriminatory practices in public accommodations on the basis of gender identity or expression is prohibited sex discrimination.</p>	<p>JHW</p>
<p>HB 2823 HD1 (HSCR851-06)</p>	<p>RELATING TO BILL OF RIGHTS DAY.</p> <p>Establishes bill of rights day; appropriates funds. (HB2823 HD1)</p> <p><b>Chair's inclination: Pass As Is.</b> The Committee Report will note that the appropriation amount was left blank to allow WAM to address fiscal considerations.</p>	<p>JHW, WAM</p>

**The following measures were previously heard on Wednesday, March 15:**

Bill NO.	Description	Referral
HB 2211 HD1 (HSCR872-06)	RELATING TO DEFINITIONS FOR WORKERS' COMPENSATION. Repeals the definition of "day or days" under the State's workers' compensation law. (HB2211 HD1) <b>Chair's inclination: SD1</b> – Amend to: 1) insert a defective effective date to allow for further discussion; and 2) make technical non-substantive amendments. Since LBR was the lead committee for this bill, copies of the proposed draft will not be available.	LBR/JHW, WAM
HB 386 HD1 (HSCR651-06)	RELATING TO COURTS. Repeals the jury service exemptions for categories, except for jurors who served within the last year and members of the police or fire department. Adds jury service exemptions for members of an emergency medical services agency, persons who live more than 70 miles from the court for jury service, or persons who are 80 or older. (HB386 HD1) <b>Chair's inclination: SD1</b> – Amend to: 1) change the effective date from January 1, 2096 to July 1, 2006; and 2) make technical non-substantive amendments.	JHW
HB 1983 HD1 (HSCR148-06)	RELATING TO THE JUDICIARY. Authorizes the chief justice to suspend court deadlines during a period of civil defense emergency. Effective 1/1/20. (HB1983 HD1) <b>Chair's inclination: SD1</b> – Amend to change the effective date from January 1, 2020 to July 1, 2006.	JHW
HB 2898 (HSCR682-06)	RELATING TO ARBITRATION. Allows the district courts to have jurisdiction over cases subject to arbitration agreements where the disputed amount is \$10,000 or less. <b>Chair's inclination: SD1</b> – Amend to specify that in cases involving arbitration subject to chapters 89, 377, or the National Labor Relations Act that "court" means the circuit court of the appropriate judicial circuit. The Committee report will note that labor arbitrations will be within the jurisdiction of circuit courts and not district courts.	JHW
HB 2899 HD1 (HSCR649-06)	RELATING TO JUDGMENT LIENS. Repeals requirement for the debtor's social security number when recording a judgment, order, or decree for lien purposes. Clarifies that liens do not continue beyond the time period that the underlying judgment, order, or decree is in force. Clarifies that liens apply to judgments, orders, and decrees. (HB2899 HD1) <b>Chair's inclination: SD1</b> – Amend to: 1) specify that this provision applies to any money judgment, including its underlying order or decree to clarify the connection between the subject of the bill with the bill's title; and 2) require that every judgment shall contain or have endorsed on it the last four digits of the social security number. The Committee Report will note that this Committee attempted to balance the need to identify the person against whom judgment is rendered and concerns about identity theft when including the amendment that the judgment contain or have endorsed on it the last four digits of the social security number.	JHW

**The following measures were previously heard on Thursday, March 16 at 9:00 a.m.:**

Bill NO.	Description	Referral
GM 260	Submitting for consideration and confirmation to the Defender Council, gubernatorial nominee, DANA S. ISHIBASHI, for a term to expire 6-30-2010. <b>Chair's inclination: Advise and Consent.</b>	JHW
HB 1984 HD1 (HSCR814-06)	RELATING TO CONVICTION DATA. Requires a review committee of the judicial council to investigate the current status of internet access to criminal conviction data. (HB1984 HD1) <b>Chair's inclination: SD1</b> – Amend to: 1) delete the reference to the privacy interest of offenders in accordance with testimony from the Office of the Attorney General that privacy doesn't extend to criminal conviction data; and 2) stipulate that the investigation of the review committee shall not include a review of the sex offender registry pursuant to chapter 846E.	JHW
HB 2895 HD1 (HSCR648-06)	RELATING TO LIMITATION OF ACTIONS. Extends the statute of limitations for a civil action based on child sex abuse to 10 years after the victim reaches age of majority. Provides a 1-year window to bring an action for child sex abuse if the extended statute of limitations has expired, provided that no more than 25 years has passed since the victim reached the age of majority. (HB2895 HD1) <b>Chair's inclination: Hold</b> because no testimony was submitted on this bill.	JHW
HB 2896 (HSCR448-06)	RELATING TO EMOTIONAL DISTRESS. Clarifies that liability for negligent infliction of emotional distress or disturbance will not arise from damage to real property and inanimate material objects. <b>Chair's inclination: Pass As Is.</b>	JHW
HB 3253 (HSCR683-06)	RELATING TO THE HAWAII RULES OF EVIDENCE. Provides that an issue regarding admission or exclusion of evidence is preserved for appeal once the court makes a definitive ruling on the issue and that a litigant need not renew objection or make offer of proof thereafter to preserve the issue for appeal. <b>Chair's inclination: SD1</b> – Amend to replace this bill with the contents of SB 2582, which has a savings clause and minor technical differences from this House version.	JHW
HB 3256 HD1 (HSCR665-06)	RELATING TO THE PENAL CODE. Makes technical and substantive changes to Penal Code chapters 704, 706, 707, 708, 709, 710, 711, and 712. (HB3256 HD1) <b>Chair's inclination: SD1</b> – Amend to restore the original bill with conformance or technical changes to reflect the recommendations of the Committee to Conduct a Comprehensive Review of the Hawai'i Penal Code because all parties testifying indicated that the proposed changes were a collaborative effort. Furthermore, everyone submitting testimony complimented the work of the Committee and Judge Alm's leadership as the Chair. Given the length of this bill, this Committee reserves the right to make technical or conforming changes to this measure until the final draft is issued.	JHW

**The following measure was previously heard on Thursday, March 16 at 1:15 p.m.:**

Bill NO.	Description	Referral
HB 3216 HD2 (HSCR718-06)	RELATING TO THE ISLAND OF KAHO'OLAWA. Directs the auditor to conduct an audit to determine the feasibility of deploying alternative energy resources to meet the energy needs of the island of Kaho'olawe and submit a report of findings and recommendations to the legislature and governor before the convening of the 2007 regular session. (HB3216 HD2) <b>Chair's inclination: SD1</b> – Amend to replace this bill with the contents of SB 3159, SD1, which appropriates funds to install renewable energy systems for a model kahua kauhale or encampment on Kaho'olawe instead of directing the Auditor to conduct an audit to determine the feasibility of deploying alternative energy resources in the House version. Since EIA was the lead committee for this bill, copies of the proposed draft will not be available.	EIA/JHW, WAM

**The following measure was previously heard on Thursday, March 16 at 2:45 p.m.:**

Bill NO.	Description	Referral
HB 1468 (HSCR688-06)	RELATING TO FIREWORKS. Allows a religious exemption from the \$25 fireworks permit fee. <b>Chair's inclination: Hold.</b>	IGA/JHW, WAM