HOUSE OF REPRESENTATIVES TWENTY-FIFTH LEGISLATURE, 2010 STATE OF HAWAII H.R. NO. 213

HOUSE RESOLUTION

REQUESTING THE LEGISLATIVE REFERENCE BUREAU TO CONDUCT A STUDY REGARDING THE EFFECT OF INFORMATION CHARGING ON THE CRIMINAL JUSTICE SYSTEM IN THE STATE OF HAWAII.

WHEREAS, a principal of our democracy is that all citizens 1 shall be accorded due process and that no person shall be 2 charged with a felony except upon a finding of probable cause, 3 as required by the State of Hawaii and United States 4 Constitutions; and 5 6 WHEREAS, prior to 2004, felony cases in Hawaii were 7 initiated either through a preliminary hearing, with a judge 8 making the probable cause determination or by indictment with a 9 grand jury making the probable cause determination; and 10 11 WHEREAS, in both procedures, prosecutors are required to 12 present evidence and witness testimony to demonstrate the 13 existence of probable cause; and 14 15 WHEREAS, during the Regular Session of 2004, Senate Bill 16 No. 2681 was introduced to allow prosecutors to initiate cases 17 for certain B and C felonies via "information charging"; and 18 19 WHEREAS, in cases initiated by information charging, the 20 court bases its probable cause determination on a written 21 declaration by the investigating detective and written 22 statements from the witnesses cited in the declaration; and 23 24 WHEREAS, Senate Bill No. 2681 was enacted as Act 62, 25 Session Laws of Hawaii 2004, and became effective upon 26 ratification of an amendment to the Hawaii Constitution allowing 27 28 felony criminal charges to be initiated by the filing of written 29 information; and 30 WHEREAS, prior to its enactment, numerous disparate 31

32 community groups and stakeholders voiced their opposition to the 33 enactment of the bill, including the Office of the Public 34 Defender; the International Longshore and Warehouse Union; the



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Japanese American Citizens League of Hawaii; Hawaii Teamsters, 1 Local 996; the League of Women Voters, and the Hawaii 2 3 Association of Criminal Defense Lawyers; and 4 WHEREAS, proponents of information charging claim that 5. information charging results in cost savings for the State and 6 the counties by reducing court costs, overtime pay for police 7 officers, and witness fees and spares witnesses from having to 8 9 make multiple appearances in court; and 10 WHEREAS, critics of information charging argue that, while 11 information charging might excuse witnesses from testifying at 12 grand jury and preliminary hearings, they are still required to 13 14 appear in court for proceedings, such as hearings and trial, unrelated to a grand jury or preliminary hearing; and 15 16 17 WHEREAS, critics of information charging also argue that, 18 without the opportunity to see and hear witnesses who testify at a preliminary hearing or to view the record of a grand jury 19 proceeding, defendants have less incentive to enter a plea, 20 resulting in increased demands for pre-trial motions and for 21 22 trial, placing an additional burden on the courts; and 23 WHEREAS, critics also argue that information charging 24 deprives the court or grand jury of the opportunity to question 25 witnesses and assess credibility when making their probable 26 27 cause determinations; and 28 WHEREAS, in 2008, the Department of the Prosecuting 29 Attorney, City and County of Honolulu, submitted its Final 30 Report regarding information charging to this body; and 31 32 WHEREAS, while the Final Report provides statistics on the 33 number of cases initiated by information charging and estimates 34 35 regarding the number of police officers and witnesses that would have been required to testify before a grand jury or preliminary 36 hearing had information charging not been available, the report 37 does not provide statistics regarding cost savings, such as 38 reduced overtime pay for police officers, that have been 39 achieved because of information charging; and 40 41 WHEREAS, the Department of the Prosecuting Attorney, City 42

and County of Honolulu, is presently requesting that three



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offenses be added to the list of criminal offenses that are 1 2 eligible for processing via information charging; and 3 WHEREAS, since the passage of Act 62, Session Laws of 4 5 Hawaii 2004, no independent third-party assessment has been conducted regarding the actual practice of information charging; 6 7 and 8 WHEREAS, it is necessary to determine the effects that Act 9 62, Session Laws of Hawaii 2004, has had on the criminal justice 10 system since its enactment; now, therefore, 11 12 BE IT RESOLVED by the House of Representatives of the 13 Twenty-fifth Legislature of the State of Hawaii, Regular Session 14 of 2010, that the Legislative Reference Bureau is requested to 15 conduct a study regarding the effect of information charging on 16 the criminal justice system in the State of Hawaii; and 17 18 BE IT FURTHER RESOLVED that this body requests that the 19 20 matters to be addressed by the study include the following: 21 22 (1)The number of cases brought by information charging, preliminary hearing before a judge, and grand jury 23 indictment, respectively, since the passage of Act 62, 24 25 Session Laws of Hawaii 2004; 26 (2) The number of cases that were dropped by the 27 Department of the Prosecuting Attorney after an 28 initial charge by information charging, as compared to 29 preliminary hearings and grand jury indictments; 30 31 (3) The number of cases brought to trial through 32 33 information charging, as compared to preliminary hearings and grand jury indictments; 34 35 (4)The number of convictions obtained, by plea or 36 37 verdict, when the case was initiated through information charging; 38 39 To what extent, if any, information charging has (5) 40 resulted in cost savings due to reductions in court 41 costs, overtime pay for police officers, and witness 42 fees: 43 44



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(6) The number of states that presently allow information charging; and

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(7) Any other appropriate information; and

6 BE IT FURTHER RESOLVED that the Judiciary, the Department 7 of the Attorney General, the Department of the Prosecuting 8 Attorney of each county, the Office of the Public Defender, and 9 the Police Departments of each county are requested to cooperate 10 with the Legislative Reference Bureau by furnishing all data, 11 information, and recommendations requested by the Legislative 12 Reference Bureau; and

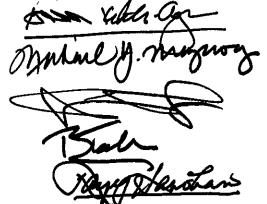
BE IT FURTHER RESOLVED that the Legislative Reference Bureau is requested to submit a report of its findings to this body no later than twenty days prior to the convening of the regular session of 2011; and

19 BE IT FURTHER RESOLVED that certified copies of this 20 Resolution be transmitted to the Chief Justice of the Supreme 21 Court, the Attorney General, the Prosecuting Attorney of each 22 county, the state Public Defender, the Chief of Police of each 23 county, and the Director of the Legislative Reference Bureau. 24

OFFERED BY:

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