



GOV. MSG. NO. 1101

EXECUTIVE CHAMBERS
KE KE'ENA O KE KIA'ĀINA

JOSH GREEN, M.D.
GOVERNOR
KE KIA'ĀINA

March 22, 2023

The Honorable Ronald D. Kouchi
President of the Senate,
and Members of the Senate
Thirty-Second State Legislature
State Capitol, Room 409
Honolulu, Hawai'i 96813

✓The Honorable Scott K. Saiki
Speaker, and Members of the
House of Representatives
Thirty-Second State Legislature
State Capitol, Room 431
Honolulu, Hawai'i 96813

Dear President Kouchi, Speaker Saiki, and Members of the Legislature:

This is to inform you that on March 22, 2023, the following bill was signed into law:

SB36

RELATING TO THE INITIATION OF FELONY
PROSECUTIONS.
ACT 001

Sincerely,

Josh Green, M.D.
Governor, State of Hawai'i

on MAR 22 2023

ACT 001

THE SENATE
THIRTY-SECOND LEGISLATURE, 2023
STATE OF HAWAII

S.B. NO. 36

JAN 18 2023

A BILL FOR AN ACT

RELATING TO THE INITIATION OF FELONY PROSECUTIONS.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF HAWAII:

1 SECTION 1. The legislature finds that the *State v. Obrero*

2 decision issued on September 8, 2022 (2022 WL 4102031), by the

3 Hawai'i Supreme Court construed section 801-1, Hawaii Revised

4 Statutes, to invalidate the longstanding practice of initiating

5 prosecution of felony cases by complaint upon a finding of

6 probable cause after a preliminary hearing. For the last forty

7 years, article I, section 10, of the Hawaii State Constitution

8 has stated, in part, that "[n]o person shall be held to answer

9 for a capital or otherwise infamous crime, unless on a

10 presentment or indictment of a grand jury or upon a finding of

11 probable cause after a preliminary hearing held as provided by

12 law or upon information in writing signed by a legal prosecuting

13 officer..." (emphasis added). As a result, the Hawaii State

14 Constitution has been interpreted to allow prosecutors to

15 initiate a prosecution by complaint upon a judge's finding of

16 probable cause after a preliminary hearing, by obtaining a grand



1 jury indictment, or, if eligible, by written information
2 pursuant to chapter 806, Hawaii Revised Statutes.

3 The legislature further finds that repeated attempts at
4 initiating prosecution of the same felony offense by presenting
5 the same evidence to both a grand jury and judge, or returning
6 to the same forum, is not contemplated by the Hawaii State
7 Constitution. Whether by presenting the allegations to a
8 different grand jury after a prior grand jury did not find
9 sufficient evidence for an indictment, or by using both the
10 grand jury and preliminary hearing processes after the first
11 forum rejected the evidence, the prosecution should not have
12 multiple opportunities to present the same evidence in hopes of
13 achieving a different outcome.

14 The purpose of this Act is to:

- 15 (1) Conform the Hawaii Revised Statutes to article I,
16 section 10, of the Hawaii State Constitution;
- 17 (2) Clarify that felony prosecutions may be initiated by
18 one of three methods:
- 19 (A) Complaint through the preliminary hearing
20 process;
- 21 (B) Indictment by grand jury; or



1 (C) If the felony charge is eligible under section
2 806-83, Hawaii Revised Statutes, written
3 information pursuant to the Hawaii State
4 Constitution and chapter 806, Hawaii Revised
5 Statutes; and

6 (3) Stipulate that multiple attempts to initiate
7 prosecution of the same felony offense by presenting
8 the same evidence to a grand jury or judge, or both,
9 either through the same initial charging method or an
10 alternative method, or in different forums, shall not
11 be permitted, except in certain circumstances.

12 SECTION 2. Section 801-1, Hawaii Revised Statutes, is
13 amended to read as follows:

14 "§801-1 Indictment, complaint, or information. (a) No
15 person shall be subject to be tried and sentenced to be punished
16 in any court, for an alleged offense, unless upon indictment,
17 complaint, or information, except for offenses within the
18 jurisdiction of a district court or in summary proceedings for
19 contempt. For any felony offense to be tried and sentenced upon
20 complaint, a finding of probable cause after a preliminary



1 hearing, or a waiver of the probable cause determination at the
2 preliminary hearing, shall be required.

3 (b) If initiation of a felony prosecution is sought via an
4 indictment by a grand jury or a finding of probable cause after
5 a preliminary hearing, and is denied, initiation of a felony
6 prosecution for the same offense using the same or an available
7 alternative charging method or by seeking a different judge or
8 jury shall not be permitted unless:

9 (1) Additional material evidence is presented;

10 (2) The initial hearing was before a grand jury and there
11 is a subsequent finding of grand jury misconduct or
12 grand jury counsel misconduct; or

13 (3) A court, upon application of the prosecutor, finds
14 good cause to allow a subsequent presentation;
15 provided that this paragraph shall not apply if
16 prosecutors have previously sought a subsequent
17 presentation for good cause."

18 SECTION 3. New statutory material is underscored.

19 SECTION 4. This Act shall take effect upon its approval.

20

INTRODUCED BY: Kal Rhoode



S.B. NO. ³⁶

APPROVED this 22nd day of March, 2023

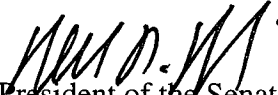
A handwritten signature in black ink, appearing to read "Jon Waihee". The signature is written in a cursive style with a long, sweeping underline.

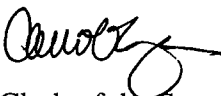
GOVERNOR OF THE STATE OF HAWAII

THE SENATE OF THE STATE OF HAWAI'I

Date: February 2, 2023
Honolulu, Hawai'i 96813

We hereby certify that the foregoing Bill this day passed Third Reading in the Senate of the Thirty-Second Legislature of the State of Hawai'i, Regular Session of 2023.


President of the Senate


Clerk of the Senate

**THE HOUSE OF REPRESENTATIVES
OF THE STATE OF HAWAI'I**

Date: **MAR 07 2023**
Honolulu, Hawai'i 96813

We hereby certify that the foregoing Bill this day passed Third Reading in the House of Representatives of the Thirty-Second Legislature of the State of Hawai'i, Regular Session of 2023.



Speaker, House of Representatives



Clerk, House of Representatives