

STAND. COM. REP. NO. 946

Honolulu, Hawaii

MAR 03 , 2023

RE: S.B. No. 36

Honorable Scott K. Saiki  
Speaker, House of Representatives  
Thirty-Second State Legislature  
Regular Session of 2023  
State of Hawaii

Sir:

Your Committee on Judiciary & Hawaiian Affairs, 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 of this measure is to:

- (1) Clarify that a person may be tried and sentenced for felony offenses through the complaint and preliminary hearing process; and
- (2) Prohibit multiple attempts to initiate a felony prosecution for the same offense, either through the same initial charging method, an alternative charging method, or a different forum, except in certain circumstances.

Your Committee received testimony in support of this measure from the Department of the Attorney General, Office of the Mayor of the County of Hawai'i, 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 Kaua'i, Department of the Prosecuting Attorney of the County of Maui, Honolulu Police Department, and

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

Your Committee finds that the Hawaii Supreme Court's majority decision in *State v. Obrero*, 151 Haw. 472, 517 P.3d 755 (2022), reconsideration denied, No. SCAP-21-0000576, 2022 WL 4533803 (Haw. Sept. 28, 2022), invalidated the State's longstanding practice of charging felony offenders via complaint. This decision led to hundreds of case dismissals across the State involving serious crimes such as murder, attempted murder, manslaughter, robbery, arson, kidnapping, and sexual assault. Since certain felony prosecutions cannot be instituted by written information under state law, the State had to re-charge many felony defendants under the grand jury process, which is duplicative and unnecessarily delays the prosecution of felony cases.

Your Committee further finds that a dissenting opinion issued in *Obrero*, highlighted the prosecution's practice of presenting its case using identical evidence to different grand jury panels until one grants the desired indictment. Your Committee believes that this practice is fundamentally unfair for defendants and undermines the purpose of and protections provided by the criminal justice process.

As affirmed by the record of votes of the members of your Committee on Judiciary & Hawaiian Affairs 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 &  
Hawaiian Affairs,



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DAVID A. TARNAS, Chair



