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# A BILL FOR AN ACT

RELATING TO INITIATION OF PROSECUTION.

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

1           SECTION 1. The legislature finds that prosecutors should  
2 not be permitted to engage in repeated attempts to charge a  
3 person with a felony offense involving the same incident by  
4 using multiple methods of initiating a prosecution. More  
5 specifically, after a grand jury has declined to return a true  
6 bill of indictment, prosecutors should not be permitted to  
7 override the failed indictment by pursuing an alternative method  
8 of bringing criminal charges, except in certain limited  
9 circumstances.

10           The purpose of this Act is to ensure fairness in the  
11 criminal justice system and prevent abuses of discretion by  
12 prosecuting attorneys by specifying that a subsequent attempt to  
13 prosecute a felony using an alternative charging method, after  
14 the first attempt has failed, shall not be permitted unless  
15 certain conditions are met.

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



1            "§801-1 Indictment or information[-]; subsequent attempts  
2 to indict or file written information for same incident.

3    (a) No person shall be subject to be tried and sentenced to be  
4 punished in any court, for an alleged offense, unless upon  
5 indictment under section 806-7 or written information under  
6 section 806-82, except for offenses within the jurisdiction of a  
7 district court or in summary proceedings for contempt.

8            (b) If indictment by a grand jury is sought and denied, or  
9 if a written information is filed with the court and denied,  
10 initiation of prosecution for the same incident by using an  
11 alternative method of charging permitted under this section or  
12 by seeking a different grand jury panel or judge shall not be  
13 permitted, unless:

14            (1) The prosecution seeks to bring charges identical to  
15 those sought in the prior grand jury proceeding or set  
16 forth in the prior written information, and the  
17 subsequent attempt at prosecution is based upon new  
18 evidence that was not presented during the prior grand  
19 jury proceeding or included in the prior written  
20 information; or



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1        (2) The prosecution seeks to bring charges of a lesser  
2                    severity than those sought in the prior grand jury  
3                    proceeding or set forth in the prior written  
4                    information."

5            SECTION 3. This Act does not affect rights and duties that  
6 matured, penalties that were incurred, and proceedings that were  
7 begun before its effective date.

8            SECTION 4. Statutory material to be repealed is bracketed  
9 and stricken. New statutory material is underscored.

10          SECTION 5. This Act shall take effect upon its approval.

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INTRODUCED BY:



JAN 23 2023



# H.B. NO. 863

**Report Title:**

Criminal Prosecution; Charges; Initiation; Use of Multiple Methods; Double Jeopardy

**Description:**

Specifies that a subsequent attempt to prosecute a felony using an alternative charging method, after the first attempt has failed, shall not be permitted unless certain conditions are met.

*The summary description of legislation appearing on this page is for informational purposes only and is not legislation or evidence of legislative intent.*

