

**Session Laws of Hawaii
Passed By The
Thirty-Second State Legislature
Regular Session
2023**

ACT 1

S.B. NO. 36

A Bill for an Act Relating to the Initiation of Felony Prosecutions.

Be It Enacted by the Legislature of the State of Hawaii:

SECTION 1. The legislature finds that the *State v. Obrero* decision issued on September 8, 2022 (2022 WL 4102031), by the Hawai'i Supreme Court construed section 801-1, Hawaii Revised Statutes, to invalidate the longstanding practice of initiating prosecution of felony cases by complaint upon a finding of probable cause after a preliminary hearing. For the last forty years, article I, section 10, of the Hawaii State Constitution has stated, in part, that “[n]o person shall be held to answer for a capital or otherwise infamous crime, unless on a presentment or indictment of a grand jury *or upon a finding of probable cause after a preliminary hearing* held as provided by law or upon information in writing signed by a legal prosecuting officer...” (emphasis added). As a result, the Hawaii State Constitution has been interpreted to allow prosecutors to initiate a prosecution by complaint upon a judge’s finding of probable cause after a preliminary hearing, by obtaining a grand jury indictment, or, if eligible, by written information pursuant to chapter 806, Hawaii Revised Statutes.

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

The purpose of this Act is to:

- (1) Conform the Hawaii Revised Statutes to article I, section 10, of the Hawaii State Constitution;
- (2) Clarify that felony prosecutions may be initiated by one of three methods:
 - (A) Complaint through the preliminary hearing process;
 - (B) Indictment by grand jury; or
 - (C) If the felony charge is eligible under section 806-83, Hawaii Revised Statutes, written information pursuant to the Hawaii

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State Constitution and chapter 806, Hawaii Revised Statutes;
and

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

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

“§801-1 Indictment, complaint, or information. (a) No person shall be subject to be tried and sentenced to be punished in any court, for an alleged offense, unless upon indictment, complaint, or information, except for offenses within the jurisdiction of a district court or in summary proceedings for contempt. For any felony offense to be tried and sentenced upon complaint, a finding of probable cause after a preliminary hearing, or a waiver of the probable cause determination at the preliminary hearing, shall be required.

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

- (1) Additional material evidence is presented;
- (2) The initial hearing was before a grand jury and there is a subsequent finding of grand jury misconduct or grand jury counsel misconduct;
or
- (3) A court, upon application of the prosecutor, finds good cause to allow a subsequent presentation; provided that this paragraph shall not apply if prosecutors have previously sought a subsequent presentation for good cause.”

SECTION 3. New statutory material is underscored.

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

(Approved March 22, 2023.)