



## DEPARTMENT OF THE ATTORNEY GENERAL

### News Release

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#### **Law Enforcement Coalition Legislative Package, 2004**

HONOLULU - Attorney General Mark Bennett announced today that the Hawaii Law Enforcement Coalition has introduced a six-bill legislative package designed to fight illegal drugs, expedite the prosecution of felonies, reform Hawaii's sentencing laws, allow public access to sex offender registration records, and deter public corruption. The Hawaii Law Enforcement Coalition is comprised of the Chief of Police of each county, the Prosecuting Attorney of each county, and the Attorney General of the State of Hawaii.

The members of the Hawaii Law Enforcement Coalition support a broad range of bills that further the goals of law enforcement and help to try to restore balance to a criminal justice system in which that balance has been lost. However, only six bills are included in the actual legislative package. Each bill in the package must have the unanimous support of the entire Law Enforcement Coalition before it can be included in the package, and thus, each and every bill in the Law Enforcement Coalition legislative package is supported by every Chief of Police in the state, it is supported by every Prosecuting Attorney in the state, and it is supported by the Attorney General of the State of Hawaii.

The following bills comprise the Law Enforcement Coalition 2004 legislative package:

1. Information Charging (A Bill for an Act Relating to Criminal Procedure, SB 2861, HB 2386) - The purpose of this bill is to implement the unanimous recommendation made by the task force created by the legislature in Act 190 of the 2003 legislative regular session. The task force recommendation is that information charging for certain class B and class C felonies be authorized and recommends the charging procedures set forth in this bill.

Under current criminal procedures, felony cases must be initiated in one of two ways. A felony charge must be presented to either a grand jury or a district court judge for a hearing to determine if there is sufficient probable cause to require the defendant to be arraigned in circuit court for the charge. In 2002, the Hawaii Constitution was amended to allow for a third way to initiate felony charges. This bill would implement the procedures necessary to add "information charging" as a third means of initiating a felony charge. It would allow particular class B and class C felonies to be initiated by the procedures that are set forth in the bill.

This bill will have a beneficial effect on the public because it will allow the majority of felony cases to be prosecuted without the need for witnesses to testify on multiple occasions. The need to testify on multiple occasions is both traumatic and expensive for the typical citizen witness. This bill will

also save the taxpayers large amounts of money. The taxpayers currently spend large amounts of money paying for the preliminary hearings and grand jury hearings that require police overtime pay and other expenditures by courts, police, prosecutors, and public defenders. This bill would eliminate the need for most of these hearings.

2. Sentencing Reform (A Bill For an Act Relating to Crime, SB 2844, HB 2369) - The purpose of this bill is to reform the sentencing laws of Hawaii.

The problem of recidivism has plagued Hawaii for many years and continues to be a concern under current sentencing provisions. Far too often, criminals and their attorneys have manipulated our system of justice, with the net result being the creation of a revolving door of crime, followed by arrest, minor sanctions, release, and more crime.

Hawaii's citizenry and police are fed up with this revolving door. This bill is designed to end the revolving door by increasing the penalties for those who commit crime after crime. These changes will deter some repeat offenders. For those who are not deterred and insist on becoming a "one-man-crime-wave," the bill provides protection for our citizens and their property by incapacitating these recidivist criminals through incarceration.

3. Amendment to allow drug interdiction using the "Walk and Talk" technique (A Bill For an Act Proposing an Amendment to Article I of the Constitution of the State of Hawaii, SB 2851, HB 2376) - The purpose of this bill is to allow police and prosecutors to obtain and use evidence derived from two valuable drug interdiction investigative techniques commonly known as "walk and talk" and "knock and talk."

This bill would initiate the process necessary to pass a constitutional amendment designed to remove the judicially created ban on the use of evidence obtained directly or indirectly from consensual conversations between law enforcement officers and other persons. Due to judicial rulings, two investigative techniques, commonly known as "walk and talk" and "knock and talk" cannot be used in Hawaii. These are valuable investigative techniques used in many other jurisdictions for the purpose of interdicting drugs.

Hawaii can no longer afford to hobble law enforcement efforts to prevent the importation of drugs. This amendment would, in effect, adopt the rulings of the United States Supreme Court on this issue. Therefore, the rights of Hawaii's residents and visitors would still be well protected by the United States Constitution, but law enforcement officers would be bound by federal court rulings, rather than the current, and extremely restrictive, Hawaii court rulings.

This amendment will have a beneficial effect on the public because it will provide more protection from the importation of illegal drugs. If our constitution is amended as provided by this bill, the Hawaii constitution will be amended in a way that allows Hawaii's law enforcement agencies to be far more effective at keeping illegal drugs and illegal drug dealers off our streets, but it will do so in a way that still provides for every single constitutional protection afforded to every accused person under the United States Constitution.

4. Electronic Surveillance (A Bill For an Act Relating to Electronic Surveillance, SB 2845, HB 2370) - The purpose of this bill is to repeal Hawaii's outdated electronic surveillance statute and to make Hawaii's electronic surveillance laws compatible with the federal laws on electronic surveillance.

With the recent increase in methamphetamine use, and after the terrorist attacks on the east coast, it has become apparent that Hawaii law enforcement officials will need statutory authorization to conduct electronic surveillance. While, in theory, that statutory authority already exists, in practice, Hawaii's current electronic surveillance laws are hopelessly behind recent technological developments and are so restrictive that wiretaps are virtually never used by Hawaii law enforcement.

Hawaii needs an electronic surveillance statute that: (1) provides strong privacy protections for Hawaii's residents; (2) is up to date with current technology; (3) is not so restrictive that it is usable; (4) is in conformance with federal electronic surveillance statutes (without adopting the USA PATRIOT Act modifications to federal law); (5) allows electronic surveillance evidence that is obtained pursuant to a federal order authorizing the electronic surveillance to be used in Hawaii courts; and (6) strikes an appropriate balance between protecting the rights of Hawaii's residents and giving law enforcement officials the tools needed to protect Hawaii residents against terrorists

and other criminals. Enacting a new statute patterned after the federal law regarding electronic surveillance will accomplish all of these goals.

5. Megan's Amendment (A Bill For an Act Proposing an Amendment to Article I of the Constitution of the State of Hawaii, SB 2843, HB 2368) - The purpose of this bill is to initiate the process to pass an amendment to Hawaii's constitution that is designed to guarantee expeditious public access to information concerning persons convicted of sexually violent offenses and crimes against children. The amendment would also expressly authorize the Legislature to provide by law for the manner in which the public access would be accomplished. Sex offenders are a threat to recidivate at higher rates than other offenders and children are less able to protect themselves against these predators. Public access to information concerning such predators is essential to the safety and well being of our citizens.

Under current Hawaii law, police have access to the registration records of sex offenders, but public access to these records is barred until each of Hawaii's 1,900 sex offenders is given an individual hearing in which they must be given the opportunity to present evidence that, despite the fact that they have been found guilty of a sexually violent offense, or a crime against a child, they pose no threat to society. It is optimistically estimated that this hearing process could take over six years and thousands of taxpayer dollars to reinstate the previous public access to sex offender records. The right of parents to know which sex offenders live in their neighborhoods outweighs by far the right of convicted sex offenders to have their hideous deeds and their neighborhoods of residence hidden from the public. After all, each sex offender in Hawaii has already been afforded every constitutional right in the process that led to a court finding him guilty beyond a reasonable doubt. The amendment this bill proposes will allow the public to have more information concerning the presence of convicted sex offenders in the community and it will increase public alertness to potential danger. At the same time, such public information will help to discourage released sex offenders from reoffending and it will help locate sex offenders who have absconded after violating the terms of their parole.

6. Bribery (A Bill For an Act Relating to Public Administration, 2848, HB 2373) - The purpose of this bill is to create two new offenses related to illegal compensation of public servants: bribery in the second degree and unlawful gift to public servants by persons subject to their jurisdiction, and to modify the language and strengthen the penalty for Hawaii's existing bribery statute.

Hawaii has had many unfortunate instances of public corruption in the last several years. It is apparent that the existing bribery statute is insufficient to deter financial misconduct by public servants. Another weakness in Hawaii's law is that the Model Penal Code's prohibition of giving gifts to public servants under inappropriate circumstances was not adopted when Hawaii adopted the rest of the Model Penal Code. Hawaii needs this type of prohibition because improper financial influence over public servants, although clearly wrong, often cannot be charged as bribery. This bill will be beneficial to the public interest because it will promote greater confidence that decisions by public officials are made without improper influence. This bill will also help public agencies because public officials who are accepting bribes or improper gifts will be easier to prosecute. Therefore, the administration of these agencies will be made more efficient by the removal of public officials convicted of the crimes created or modified by this bill.

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