



DEPARTMENT OF THE ATTORNEY GENERAL

News Release

LINDA LINGLE
GOVERNOR

Mark J. Bennett, Attorney General
Phone: (808) 586-1500
Fax: (808) 586-1239

For Immediate Release: January 21, 2010

News Release No. 2010-01

**HAWAII LAW ENFORCEMENT COALITION
ANNOUNCES 2010 LEGISLATIVE PACKAGE**

HONOLULU – The Hawai'i Law Enforcement Coalition today announced a legislative package of five bills designed to protect the public, protect victims of domestic violence, reform laws regarding evidence, and provide substantial savings to taxpayers while still protecting suspects' rights.

The Coalition comprises the Attorney General, the Prosecuting Attorneys and Police Chiefs of Hawai'i's four counties, and the United States Attorney for the District of Hawai'i. The Coalition supports a broad range of measures to protect the public and restore balance in Hawai'i's criminal justice system. Each of the bills in the Coalition's legislative package has the unanimous support of every Coalition member.

Information Charging HB 840 / SB 1020

- Adds several new offenses to the statute that permits charging of certain felonies by information.

Information charging was instituted in 2004 to streamline the criminal justice system by allowing the charging of these felonies by submitting documents setting forth probable cause to a judge, rather than requiring witnesses to come to court to testify. Use of information charging has spared numerous witnesses the necessity of having to appear before a grand jury or at a preliminary hearing. In these tight fiscal times, it is important to note that information charging has eliminated the need to pay witness fees for these witnesses and alleviated the need to have police officers waiting at court to testify, thus sparing police resources and enhancing community safety.

Three felonies (Unauthorized Entry In a Dwelling, Unauthorized Possession of Confidential Personal Information, and Methamphetamine Trafficking in the Second Degree) are being added by this bill. These offenses were created after the information charging statutes were passed, so they were not included in the original list of offenses. They are similar to offenses currently on the list of felonies eligible for information charging so there is no reason they should not be included.

"The impact of information charging on the judicial system has been dramatic," Honolulu Prosecuting Attorney Peter Carlisle said. "The cost saving for the courts, police and private citizens and their employers has been enormous. Also significant is the emotional relief, reduction of stress, and time saved by civilian victims and witnesses who were spared from going to court to testify. Information charging has proved to be an impressively successful innovation in Hawai'i's criminal justice system."

The text of the bill is available at:

<http://www.capitol.hawaii.gov/session2009/getstatus.asp?query=hb840%2C+sb1020&currpage=1&showstatus=on&showtext=on&showcommrpt=on&showtestimony=on>

Testimony of Defendants in Criminal Cases (HB 1017 / SB 835)

- Amends the state constitution to allow testifying defendants in criminal cases to be impeached with evidence of prior convictions for crimes involving dishonesty.

In federal court and in the courts of almost all other states, when a criminal defendant or any other witness testifies, the witness's prior convictions for crimes involving dishonesty can be used to impeach the witness -- that is, to help the jury decide if the witness is telling the truth. But in Hawai'i, the state Supreme Court has prohibited the use of such prior convictions to impeach defendants in criminal cases, even though victims and other witnesses to crime can be impeached in this way. Thus, in a rape case tried today in Hawai'i state court, if both the victim and the testifying defendant have been convicted of perjury in the past, the jury will learn that the *victim* has a conviction but will not learn that the *defendant* has one.

"Hawai'i is virtually unique in this respect, and as a result, the truth-finding function of trials suffers," Attorney General Mark Bennett said. "This amendment will provide that, in a criminal case, the judge or jury can use evidence of prior convictions of crimes involving dishonesty to evaluate a testifying defendant's credibility, to the same extent as with any other testifying witness. It will help juries find the truth and render fairer verdicts."

If approved by the Legislature, this proposed constitutional amendment will be placed on the 2010 general election ballot for Hawai'i's voters to decide.

The text of the bill is available at:

<http://www.capitol.hawaii.gov/session2009/getstatus.asp?query=hb1017%2C+sb835&currpage=1&showstatus=on&showtext=on&showcommrpt=on&showtestimony=on>

"Use Immunity" (HB 1018 / SB 836)

- Amends the state constitution to allow prosecutors to compel the testimony of a witness claiming Fifth Amendment privilege, but prohibits use of that testimony in any criminal proceeding against that witness, except prosecution for perjury or false statement.

It is critically important to the successful prosecution of criminal cases in Hawai'i that the State have the means to compel the testimony of witnesses in possession of vital information. Currently, if a witness asserts a privilege to refuse to testify or provide evidence on the ground of self-incrimination, the State can compel that witness's testimony only by providing that

witness complete and permanent "transactional immunity" from any criminal prosecution ever for or on account of any act, transaction, or matter concerning which the witness is required to testify. This severely burdens Hawai'i's prosecutors.

By comparison, in prosecutions by the United States and most of Hawai'i's sister states, a witness's testimony can be compelled, so long as the testimony, and any evidence and information derived from that testimony, cannot be used against that witness in any criminal case, except one for perjury, false statement, failing to comply with the order to testify, or similar offenses. Such a system, called "use immunity," has been upheld as complying with the Constitution of the United States by the United States Supreme Court.

"'Use immunity' appropriately balances society's need to prosecute serious criminal cases with the rights of individuals," Bennett said. "Under the current system, testimony can only be compelled if 'transactional immunity' is granted. This makes society pay too high a price for such testimony and severely impedes the ability of prosecutors to obtain convictions in appropriate cases."

Hawai'i's legislature enacted a "use immunity" statute, but the Hawai'i Supreme Court struck it down as violating Hawai'i's Constitution. Thus, amending Hawai'i's Constitution is the only option if "use immunity" is to be allowed in Hawai'i.

If approved by the Legislature, this proposed constitutional amendment will be placed on the 2010 general election ballot for Hawai'i's voters to decide.

The text of the bill is available at:

<http://www.capitol.hawaii.gov/session2009/getstatus.asp?query=hb1018%2C+sb836&currpage=1&showstatus=on&showtext=on&showcommrpt=on&showtestimony=on>

Murder (HB 1019 / SB 837)

- Amends the offense of Murder in the Second Degree to include acts committed with the intent to cause serious bodily injury to another person or create the strong probability of causing death or serious bodily injury to another person, when those acts result in death.

Offenders who kill a person should not have the ability to avoid murder convictions by claiming they were only trying to cause serious injury, not death. If there is intent to cause serious injury, or assaultive acts that create a strong probability of death, and death results, a murder conviction should result – and will result if this bill is adopted.

The text of the bill is available at:

<http://www.capitol.hawaii.gov/session2009/getstatus.asp?query=hb1019%2C+sb837&currpage=1&showstatus=on&showtext=on&showcommrpt=on&showtestimony=on>

Domestic Violence (HB 1020 / SB 838)

- Provides greater protection to victims of domestic violence by raising the seriousness of violent offenses committed against victims whom the courts or police are attempting to keep safe through protective orders.

Victims of domestic violence often endure extended periods of physical and mental abuse, intimidation, harassment, and terrorization – and too often, they are killed by their tormentors. Even with intervention by the police and the court system, the abuse and violence may not end. Current laws do not provide adequate protection or deterrence. This bill will help.

This bill amends the offenses of Murder in the First Degree, Murder in the Second Degree, Assault in the Second Degree, and Terroristic Threatening in the First Degree by raising the level of each offense when the offense is committed against victims who have obtained certain types of protective orders, by those who are the subjects of the protective orders. Thus, what was misdemeanor assault will become felony assault if committed by a person against whom the victim has obtained a certain type of protective order. Misdemeanor terroristic threatening will become felony terroristic threatening, manslaughter will become second degree murder, and second degree murder will become first degree murder.

"These increased penalties will deter abusers and give law enforcement more opportunity to protect victims," Hawai'i County Prosecuting Attorney Jay Kimura said.

The text of the bill is available at:

<http://www.capitol.hawaii.gov/session2009/getstatus.asp?query=hb1020%2C+sb838&currpage=1&showstatus=on&showtext=on&showcommrpt=on&showtestimony=on>

###

For more information, contact:

Bridget Holthus
Special Assistant to the Attorney General
(808) 586-1284
bridget.holthus@hawaii.gov
www.hawaii.gov/ag

Jim Fulton
Department of the Prosecuting Attorney, Honolulu
(808) 768-6539
honolulu.gov/prosecuting