November 29, 2019

The Honorable Ronald D. Kouchi
President
Hawai‘i State Senate
State Capitol, Room 409
Honolulu, HI 96813

The Honorable Scott K. Saiki
Speaker
House of Representatives
State Capitol, Room 431
Honolulu, HI 96813

Dear President Kouchi and Speaker Saiki:

Please find enclosed the Final Report of the House Concurrent Resolution 218 Task Force on Fair and Proportional Fines to the Thirtieth Legislature of the State of Hawai‘i, as requested by House Concurrent Resolution No. 218, S.D. 1, Regular Session of 2019.

In accordance with Section 93-16, Hawai‘i Revised Statutes, we are also transmitting a copy of this report to the Legislative Reference Bureau Library.

The public may view an electronic copy of this report on the Judiciary’s website at the following link: http://www.courts.state.hi.us/news and reports/reports/reports.html.

Should you have any questions regarding this report, please feel free to contact Karen Takahashi of the Judiciary’s Legislative Coordinating Office at 539-4896, or via e-mail at Karen.T.Takahashi@courts.hawaii.gov.

Sincerely,

Mark E. Recktenwald
Chief Justice

Enclosure

C: Honorable Sherri-Ann Iha, Chair, HCR 218 (2019) Task Force
Rodney A. Maile, Administrative Director of the Courts
Legislative Reference Bureau Library
FINAL REPORT OF THE
HOUSE CONCURRENT RESOLUTION 218 TASK FORCE (2019)
ON
FAIR AND PROPORTIONAL FINES
TO THE THIRTIETH LEGISLATURE
2020 REGULAR SESSION

Prepared by:
HCR 218 TASK FORCE

December 2020
TASK FORCE MEMBERSHIP

Many thanks to the following members and participants for their hard work and dedication to the effort, and to the Judiciary’s Legislative Coordinating Office for its facilitation.

Judge Sherri-Ann Iha, Chair
District Court of the First Circuit

Representative Chris Lee,
Chair, House Committee on Judiciary

Senator Glenn Wakai,
Vice Chair, Senate Committee on Judiciary

Albert Cook
Deputy Attorney General, Department of Attorney General

Jerry Villanueva
Deputy Public Defender, Office of Public Defender

Dwight Nadamoto
Acting Prosecuting Attorney, City and County of Honolulu

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Prosecuting Attorney, County of Maui

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Acknowledgements
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Special Assistant to the Administrative Director of the Courts

Karen Takahashi
Special Projects Coordinator, Legislative Coordinating/Special Projects Office

Mark Tom
Deputy Prosecuting Attorney, City and County of Honolulu
FAIR AND PROPORTIONAL FINE TASK FORCE

A. Introduction

The Thirtieth Legislature, 2019 Regular Session, State of Hawai’i, adopted House Concurrent Resolution No. 218, Senate Draft 1 (HCR 218), requesting a task force to review and report on the establishment of fair and proportional fines for certain penalties in Hawai‘i to ensure a fair and meaningful deterrent to illegal behavior for individuals across the economic spectrum. Attached as Appendix A is a copy of HCR 218.

B. Legislative Mandate

Pursuant to HCR 218, Chief Justice Mark E. Recktenwald established the Fair and Proportional Fines Task Force (hereinafter Task Force). HCR 218 provided:

WHEREAS, penalties for some violations and infractions in all areas of law in Hawai‘i tend to be flat fines, including but not limited to speeding, and negligent or reckless actions; and

WHEREAS, such actions can lead to serious injuries or death and, in the case of traffic violations, are a leading cause of vehicular accidents and manslaughter in Hawai‘i; and

WHEREAS, penalties for those violations and infractions should serve as a meaningful deterrent to illegal behavior; however, a flat fine often serves as a meaningful deterrent only for those to whom it has a financial impact, making for an unfair application of justice in Hawai‘i; and

WHEREAS, while a fine for $200 may serve as a meaningful deterrent to illegal behavior for an individual of average means, it may require a $2,000 fine to serve as a meaningful deterrent to illegal behavior for a wealthy individual.

HCR 218 also provided that the Task Force shall be composed of the following members or their designees:

1. Chief Justice of the Hawai‘i Supreme Court;
2. Attorney General;
3. Public Defender;
4. Prosecuting Attorney of each county;
5. Chair of the House of Representatives Committee on Judiciary;
6. Member of the Senate designated by the President of the Senate; and
7. Any others appointed by the chair of the task force.

The Task Force was chaired by Judge Sherri-Ann Iha, District Court of the First Circuit. HCR 218 requested that the Task Force submit a report to the legislature of its findings and recommendations, including any proposed legislation, no later than December 1, 2019.
C. Review and Findings

The Task Force met as a whole on August 13, September 9, and October 14, 2019. Each meeting included considerable discussion about the scope and purpose of the Task Force. It was shared that the Task Force was charged with examining the use of a pilot project to establish proportional fines, such as day fines,1 to address legislative concerns about recidivism among wealthy offenders.

Given the language of HCR 218, the Task Force focused on the issue of recidivism for traffic crimes, which includes serious offenses such as reckless driving. The Task Force determined that discussion should not include OVUII (operating a vehicle while under the influence of an intoxicant) and HOVUII (habitually operating a vehicle while under the influence of an intoxicant) offenses, given that the legislature had recently increased the penalties for those offenses.2 Attached as Appendix B is a copy of Act 169, SLH 2019.

Task force members further noted that Act 112, SLH 2019 (Act 112) mandated the creation of a Financial Hardship Task Force3 charged with examining mechanisms to help those who are unable to pay assessed traffic fines and fees, including the court’s continued use of ability to pay

1 One report describes day fines as follows:

Structured fines, also called “day fines,” constitute a type of monetary sanction that can be used to sentence convicted criminal offenders. Initially developed in Europe, structured fines are based on a simple concept: punishment by a fine should be proportionate to the seriousness of the offense and should have roughly similar impact (in terms of economic sting) on persons with differing financial resources who are convicted of the same offense. Structured fines are set through a two-step process that determines the severity of the punishment separately from assessment of a specific dollar amount. First, on the basis of a scale that ranks offenses according to their gravity, the number of structured fine units for the crime is determined. Second, the dollar amount of the fine is figured by multiplying the number of fine units by a portion of a defendant’s net daily income (hence the term “day fine”), adjusted to account for dependents and special circumstances.

BUREAU OF JUSTICE ASSISTANCE, HOW TO USE STRUCTURED FINES (DAY FINES) AS AN INTERMEDIATE SANCTION 1 (1996). Day fines were piloted in the United States in the 1980s and 1990s; however, those pilots are no longer running. See Beth A. Colgan, Graduated Economic Sanctions According to Ability to Pay, 203 IOWA L. REV. 53 (2017); see also Joe Pinkser, Finland, Home of the $103,000 Speeding Ticket, THE ATLANTIC (Mar. 12, 2015), available at https://www.theatlantic.com/business/archive/2015/03/finland-home-of-the-103000-speeding-ticket/387484/. At least two states currently have statutes authorizing the use of day fines, Alabama and Oklahoma, but to the Task Force’s knowledge neither state has day fine programs currently in place.

2 House Bill No. 703, House Draft 1, Senate Draft 2, Conference Draft 1, which became law as Act 169, increased the penalties for OVUII and HOVUII offenses, and called for the convening of a task force to examine other OVUII and HOVUII-related issues.

3 The Financial Hardship Task Force was established pursuant to House Bill No. 903, House Draft 1, Senate Draft 1, Concurrent Draft 1 (2019), which became law as Act 112.
determinations to adjust monetary assessments for those facing financial hardship. Attached as Appendix C is a copy of Act 112.

Task Force members noted that they commonly see issues with people not having enough money to pay traffic-related fines and fees, but that they are less familiar with issues of wealthy individuals reoffending after being convicted of traffic crimes. As a result, before Task Force members are able to determine whether a day fine program would help to lower recidivism among wealthy offenders, a baseline assessment is needed to further define the scope and nature of the problem.

D. Recommendations

The Task Force recommends that the Legislative Reference Bureau, in conjunction with information from the Judiciary Information Management System and other sources, conduct research to determine whether recidivism based on income level is an issue in criminal traffic cases. The Task Force recommends that this research compare the recidivism rate for those offenses with mandatory fines to the recidivism rate for those offenses with graduated sentencing.
ATTACHMENT A

House Concurrent Resolution 218,
S.D. 1 (2019)
HOUSE CONCURRENT RESOLUTION

REQUESTING A TASK FORCE TO REVIEW AND REPORT ON THE ESTABLISHMENT OF FAIR AND PROPORTIONAL FINES FOR CERTAIN PENALTIES IN HAWAII TO ENSURE A FAIR AND MEANINGFUL DETERRENT TO ILLEGAL BEHAVIOR FOR INDIVIDUALS ACROSS THE ECONOMIC SPECTRUM.

WHEREAS, penalties for some violations and infractions in all areas of law in Hawaii tend to be flat fines, including but not limited to speeding, and negligent or reckless actions; and

WHEREAS, such actions can lead to serious injuries or death and, in the case of traffic violations, are a leading cause of vehicular accidents and manslaughter in Hawaii; and

WHEREAS, penalties for those violations and infractions should serve as a meaningful deterrent to illegal behavior; however, a flat fine often serves as a meaningful deterrent only for those to whom it has a financial impact, making for an unfair application of justice in Hawaii; and

WHEREAS, while a fine for $200 may serve as a meaningful deterrent to illegal behavior for an individual of average means, it may require a $2,000 fine to serve as a meaningful deterrent to illegal behavior for a wealthy individual; now, therefore,

BE IT RESOLVED by the House of Representatives of the Thirtieth Legislature of the State of Hawaii, Regular Session of 2019, the Senate concurring, that a task force be established to review and report on the establishment of fair and proportional fines for certain penalties in Hawaii to ensure a fair and meaningful deterrent to illegal behavior for individuals across the economic spectrum; and
BE IT FURTHER RESOLVED that the task force is requested to consist of:

(1) The Chief Justice of the Hawaii Supreme Court, or the Chief Justice's designee, who shall chair the task force;

(2) The Attorney General, or the Attorney General's designee;

(3) The Public Defender, or the Public Defender's designee;

(4) The Prosecuting Attorney of each county, or the Prosecuting Attorney's designee;

(5) The Chair of the House of Representatives Committee on Judiciary;

(6) One member of the Senate designated by the President of the Senate; and

(7) Any others appointed by the chair of the task force; and

BE IT FURTHER RESOLVED that the task force is requested to submit a report of its findings and recommendations, including any proposed legislation, to the Legislature no later than December 1, 2019; and

BE IT FURTHER RESOLVED that certified copies of this Concurrent Resolution be transmitted to the Governor; Chief Justice of the Hawaii Supreme Court; Attorney General of the State of Hawaii; Public Defender of the State of Hawaii; and Prosecuting Attorney of each county.
ATTACHMENT B

Act 169, SLH 2019

(House Bill No. 703, H.D. 1, S.D.2, C.D. 1, Relating to Intoxicating Liquor)
June 27, 2019

The Honorable Ronald D. Kouchi,
President
and Members of the Senate
Thirtieth State Legislature
State Capitol, Room 409
Honolulu, Hawai'i 96813

The Honorable Scott K. Saiki,
Speaker and Members of the
House of Representatives
Thirtieth State Legislature
State Capitol, Room 431
Honolulu, Hawai'i 96813

Dear President Kouchi, Speaker Saiki, and Members of the Legislature:

This is to inform you that on June 27, 2019, the following bill was signed into law:

HB703 HD1 SD2 CD1 RELATING TO INTOXICATING LIQUOR.
ACT 169 (19)

Sincerely,

DAVID Y. IGE
Governor, State of Hawai'i
A BILL FOR AN ACT

RELATING TO INTOXICATING LIQUOR.

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

SECTION 1. Section 291E-61, Hawaii Revised Statutes, is amended by amending subsection (b) to read as follows:

"(b) A person committing the offense of operating a vehicle under the influence of an intoxicant shall be sentenced without possibility of probation or suspension of sentence as follows:

(1) For the first offense, or any offense not preceded within a [five-year] ten-year period by a conviction for an offense under this section or section 291E-4(a):

(A) A fourteen-hour minimum substance abuse rehabilitation program, including education and counseling, or other comparable program deemed appropriate by the court;

(B) One-year revocation of license and privilege to operate a vehicle during the revocation period and installation during the revocation period of
an ignition interlock device on any vehicle
operated by the person;

(C) Any one or more of the following:

(i) Seventy-two hours of community service work;

(ii) [Net] No less than forty-eight hours and
[Net] no more than five days of
imprisonment; or

(iii) A fine of [Net] no less than [$250] $250 but
[Net] no more than $1,000;

(D) A surcharge of $25 to be deposited into the
neurotrauma special fund; and

(E) A surcharge, if the court so orders, of up to $25
to be deposited into the trauma system special
fund;

(2) For an offense that occurs within [five] ten years of
a prior conviction for an offense under this section
or section 291E-4(a):

(A) Revocation for [Net] no less than [eighteen]
twenty-four months nor more than [two] three
years of license and privilege to operate a
vehicle during the revocation period and
installation during the revocation period of an ignition interlock device on any vehicle operated by the person;

(B) Either one of the following:

(i) No less than two hundred forty hours of community service work; or

(ii) No less than five days but no more than thirty days of imprisonment, of which at least forty-eight hours shall be served consecutively;

(C) A fine of no less than $1,000 but no more than $3,000;

(D) A surcharge of $25 to be deposited into the neurotrauma special fund; and

(E) A surcharge of up to $50 if the court so orders, to be deposited into the trauma system special fund;

(3) For an offense that occurs within five years of two prior convictions for offenses under this section or section 291E-4(a):
(A) A fine of not less than $500 but not more than $2,500;

(B) Revocation for two years of license and privilege to operate a vehicle during the revocation period and installation during the revocation period of an ignition interlock device on any vehicle operated by the person;

(C) Not less than ten days but not more than thirty days imprisonment, of which at least forty-eight hours shall be served consecutively;

(D) A surcharge of $25 to be deposited into the neurotrauma special fund; and

(E) A surcharge of up to $50 if the court so orders, to be deposited into the trauma system special fund;

(4)] (3) In addition to a sentence imposed under paragraphs (1) [through (3),] and (2), any person eighteen years of age or older who is convicted under this section and who operated a vehicle with a passenger, in or on the vehicle, who was younger than fifteen years of age, shall be sentenced to an
additional mandatory fine of $500 and an additional
mandatory term of imprisonment of forty-eight hours;
provided that the total term of imprisonment for a
person convicted under this paragraph shall not exceed
the maximum term of imprisonment provided in paragraph
(1) or (2), as applicable.
Notwithstanding paragraphs (1) and (2), the revocation
period for a person sentenced under this paragraph
shall be no less than two years; and
[(4)] (4) If the person demonstrates to the court that the person:
(A) Does not own or have the use of a vehicle in
which the person can install an ignition
interlock device during the revocation period; or
(B) Is otherwise unable to drive during the
revocation period,
the person shall be absolutely prohibited from driving during
the period of applicable revocation provided in paragraphs (1)
to [(4)] (3); provided that the court shall not issue an
ignition interlock permit pursuant to subsection (i) and the
person shall be subject to the penalties provided by section
291E-62 if the person drives during the applicable revocation period."

SECTION 2. Section 291E-61.5, Hawaii Revised Statutes, is amended as follows:

1. By amending subsection (b) to read:

"(b) For the purposes of this section:

(1) "Convicted [three] two or more times for offenses of operating a vehicle under the influence" means that, at the time of the behavior for which the person is charged under this section, the person had [three] two or more times within ten years of the instant offense:

(A) A judgment on a verdict or a finding of guilty, or a plea of guilty or nolo contendere, for a violation of section 291-4, 291-4.4, or 291-7 as those sections were in effect on December 31, 2001, or section 291E-61 or 707-702.5;

(B) A judgment on a verdict or a finding of guilty, or a plea of guilty or nolo contendere, for an offense that is comparable to section 291-4, 291-4.4, or 291-7 as those sections were in
effect on December 31, 2001, or section 291E-61 or 707-702.5; or

(C) An adjudication of a minor for a law or probation violation that, if committed by an adult, would constitute a violation of section 291-4, 291-4.4, or 291-7 as those sections were in effect on December 31, 2001, or section 291E-61 or 707-702.5, that, at the time of the instant offense, had not been expunged by pardon, reversed, or set aside. All convictions that have been expunged by pardon, reversed, or set aside [prior to] before the instant offense shall not be deemed prior convictions for the purposes of proving that the person is a habitual operator of a vehicle while under the influence of an intoxicant.

(2) "Convicted one or more times for offenses of habitually operating a vehicle under the influence" means that, at the time of the behavior for which the person is charged under this section, the person had
one or more times within ten years of the instant offense:

(A) A judgment on a verdict or a finding of guilty, or a plea of guilty or nolo contendere, for a violation of this section or section 291-4.4 as that section was in effect on December 31, 2001;

(B) A judgment on a verdict or a finding of guilty, or a plea of guilty or nolo contendere, for an offense that is comparable to this section or section 291-4.4 as that section was in effect on December 31, 2001; or

(C) An adjudication of a minor for a law or probation violation that, if committed by an adult, would constitute a violation of this section or section 291-4.4 as that section was in effect on December 31, 2001,

that, at the time of the instant offense, had not been expunged by pardon, reversed, or set aside. All convictions that have been expunged by pardon, reversed, or set aside [prior to] before the instant offense shall not be deemed prior convictions for the
purposes of proving the person's status as a habitual operator of a vehicle while under the influence of an intoxicant.

(3) "Habitual operator of a vehicle while under the influence of an intoxicant" means that the person:

(A) Was convicted [three] two or more times for offenses of operating a vehicle under the influence; or

(B) Was convicted one or more times for offenses of habitually operating a vehicle under the influence."

2. By amending subsection (d) to read:

"(d) For a conviction under this section, the sentence shall be either:

(1) An indeterminate term of imprisonment of five years;

or

(2) A term of probation of five years, with conditions to include:

(A) Mandatory revocation of license and privilege to operate a vehicle for a period [net] no less than
[one-year] three years but [not] no more than five years;

(B) [not] No less than ten days imprisonment, of which at least forty-eight hours shall be served consecutively;

(C) A fine of no less than $2,000 but no more than $5,000;

(D) Referral to a certified substance abuse counselor as provided in section 291E-61(d);

(E) A surcharge of $25 to be deposited into the neurotrauma special fund; and

(F) May be charged a surcharge of up to $50 to be deposited into the trauma system special fund if the court so orders.

In addition to the foregoing, any vehicle owned and operated by the person committing the offense shall be subject to forfeiture pursuant to chapter 712A[7]; provided that the department of transportation shall provide storage for vehicles forfeited under this subsection."

SECTION 3. Section 291E-62, Hawaii Revised Statutes, is amended by amending subsection (a) to read as follows:
"(a) No person whose license and privilege to operate a vehicle have been revoked, suspended, or otherwise restricted pursuant to this section or to part III or section 291E-61 or 291E-61.5, or to part VII or part XIV of chapter 286 or section 200-81, 291-4, 291-4.4, 291-4.5, or 291-7 as those provisions were in effect on December 31, 2001, shall operate or assume actual physical control of any vehicle:

(1) In violation of any restrictions placed on the person's license;

(2) While the person's license or privilege to operate a vehicle remains suspended or revoked;

(3) Without installing an ignition interlock device required by this chapter; or

(4) With an ignition interlock permit unless the person has the ignition interlock permit [and a valid State of Hawaii identification card] in the person's immediate possession."

SECTION 4. (a) The president of the senate and the speaker of the house of representatives shall convene a task force to examine and propose legislation that would allow the courts, under certain circumstances, to prohibit a person
convicted of operating a vehicle under the influence of an
intoxicant or habitually operating a vehicle under the influence
of an intoxicant from purchasing or publicly consuming alcohol
for a probation period.

(b) The task force shall include:

(1) Two members to be appointed by the president of the
senate;

(2) Two members to be appointed by the speaker of the
house of representatives;

(3) Two district court judges appointed by the chief
justice; and

(4) The director of transportation who shall serve as an
ex-officio member.

The task force may add additional members as it deems necessary.

(c) The task force shall submit a report of its findings
and recommendations to the legislature no later than twenty days
before the convening of the regular session of 2020.

SECTION 5. This Act does not affect rights and duties that
matured, penalties that were incurred, and proceedings that were
begun before its effective date.
SECTION 6. If any provision of this Act, or the application thereof to any person or circumstance, is held invalid, the invalidity does not affect other provisions or applications of the Act that can be given effect without the invalid provision or application, and to this end the provisions of this Act are severable.

SECTION 7. Statutory material to be repealed is bracketed and stricken. New statutory material is underscored.

SECTION 8. This Act shall take effect on July 1, 2019.
We hereby certify that the above-referenced Bill on this day passed Final Reading in the House of Representatives of the Thirtieth Legislature of the State of Hawaii, Regular Session of 2019.

Scott K. Saiki
Speaker
House of Representatives

Brian L. Takeshita
Chief Clerk
House of Representatives
We hereby certify that the foregoing Bill this day passed Final Reading in the Senate of the Thirtieth Legislature of the State of Hawai‘i, Regular Session of 2019.
ATTACHMENT C

Act 112, SLH 2019

(House Bill No. 903, H.D. 1, S.D.1, C.D. 1, Relating to the Judiciary)
Dear President Kouchi, Speaker Saiki, and Members of the Legislature:

This is to inform you that on June 21, 2019, the following bill was signed into law:

HB903 HD1 SD1 CD1 RELATING TO THE JUDICIARY.
ACT 112 (19)

Sincerely,

[Signature]

DAVID Y. IGE
Governor, State of Hawai‘i
A BILL FOR AN ACT

RELATING TO THE JUDICIARY.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF HAWAI'I:

SECTION 1. The legislature finds that the imposition of excessive fines and fees has dire consequences for low-income individuals. Under Hawaii law, individuals who cannot afford to pay court-ordered fines or fees may have their driver's licenses suspended for failure to pay. For many individuals, especially those living in more remote areas with minimal or no public transportation, driver's license suspensions may deprive individuals of their only means of transportation to and from work. Furthermore, individuals with suspended driver's licenses who are unable to find alternative means of transportation may lose their employment. With limited or no income, individuals are even less likely to pay fines or fees, which may lead to greater penalties simply because those individuals are unable to pay initial fines or fees in one lump sum.

The purpose of this Act is to address the financial disparity imposed on low-income individuals who cannot afford to
pay court-ordered fines and fees by requiring the judiciary to establish a financial hardship task force.

SECTION 2. (a) There is established within the judiciary the financial hardship task force to:

(1) Examine the financial disparity imposed on low-income individuals in the court system;

(2) Analyze other mechanisms regarding the nonpayment of fines rather than suspending driver's licenses;

(3) Coordinate with applicable agencies; and

(4) Analyze any other programs deemed necessary.

(b) The task force shall be composed of the following members or their designees:

(1) The chief justice, who shall serve as chair;

(2) The attorney general;

(3) The director of public safety;

(4) The director of transportation; and

(5) The chief of police of each county.

(c) Members of the task force shall serve without compensation but shall be reimbursed for expenses incurred, including travel expenses, necessary for the performance of their duties.
(d) The task force shall be exempt from chapter 92, Hawaii Revised Statutes.

(e) The task force shall submit a report to the legislature of its findings and recommendations, including any proposed legislation, no later than twenty days before the convening of the regular session of 2020.

(f) The task force shall cease to exist on June 30, 2020.

SECTION 3. This Act shall take effect upon its approval.

APPROVED this 21 day of JUN, 2019

GOVERNOR OF THE STATE OF HAWAII
THE HOUSE OF REPRESENTATIVES OF THE STATE OF HAWAII

Date: May 1, 2019
Honolulu, Hawaii

We hereby certify that the above-referenced Bill on this day passed Final Reading in the House of Representatives of the Thirtieth Legislature of the State of Hawaii, Regular Session of 2019.

Scott K. Saiki
Speaker
House of Representatives

Brian L. Takeshita
Chief Clerk
House of Representatives
H.B. No. 903, H.D. 1, S.D. 1, C.D. 1

THE SENATE OF THE STATE OF HAWAI‘I

Date: April 30, 2019
Honolulu, Hawaii 96813

We hereby certify that the foregoing Bill this day passed Final Reading in the Senate of the Thirtieth Legislature of the State of Hawai‘i, Regular Session of 2019.

[Signature]
President of the Senate

[Signature]
Clerk of the Senate