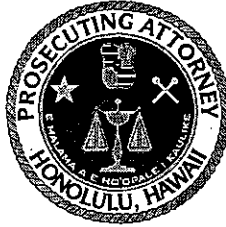


DEPARTMENT OF THE PROSECUTING ATTORNEY
CITY AND COUNTY OF HONOLULU

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LATE TESTIMONY

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THE HONORABLE BRIAN TANIGUCHI, CHAIR
SENATE COMMITTEE ON JUDICIARY AND LABOR
Twenty-Fourth State Legislature
Regular Session of 2008
State of Hawaii

January 31, 2008

**RE: S.B. 2400; RELATING TO DECRIMINALIZATION OF MINOR OFFENSES
PURSUANT TO ACT 124, SESSION LAWS OF HAWAII
2005.**

Chair Taniguchi and members of the Senate Committee on Judiciary and Labor, the Department of the Prosecuting Attorney of the City and County of Honolulu submits the following testimony in opposition to Senate Bill 2400.

The purpose of this bill appears to be the decriminalization of minor criminal offenses which were identified as being those for which a fine is typically imposed.

We do agree that there are certain criminal offenses which should be reduced to infractions or criminal violations or perhaps handled by civil fines. However, we are unsure of what the bill intends when it removes the jail time from various provisions. Does it intend to create civil infractions or criminal violations?

Although both civil infractions and criminal violations carry no jail term and are punishable by only a fine, there is a distinction when it comes to the ability of the police to physically arrest the violator as opposed to issuing them a citation. As a civil infraction, the police would not be able to physically arrest a violator; as a criminal violation the police would have the option for physical arrest pursuant to Hawaii Revised Statutes section 803-6(b).

We would note that although these offenses are typically resolved by a fine, there are circumstances for some of these offenses where the police should have the option for physical arrest. For example, vending from a highway is currently a petty misdemeanor. It is typically used when the police get complaints that the vendors along the shoulder of the highway are causing hazardous traffic conditions or are causing traffic congestion. Section 10 of the bill deletes the jail time and makes it punishable by a fine only. If the deletion causes vending from a highway to be a civil infraction and the police have no power to physically arrest, vendors who fail to desist after citation could only be repeatedly cited and could not be physically removed via arrest.

We also have some concerns regarding the inclusion of other offenses such as the current misdemeanor offense in section 17 of possessing moped parts knowing the identification number had been changed, altered, erased or mutilated. This offense appears to be aimed at people trading in stolen parts which we believe is serious enough to allow for the possibility of both physical arrest and the imposition of terms of imprisonment. We have similar concerns for the offenses in sections 11 to 16.

For these reasons, we oppose Senate Bill 2400 as currently written.

Thank you for this opportunity to testify.