

**SB 2400**



**Testimony to the Senate Committee on Judiciary and Labor**

Senator Brian T. Taniguchi, Chair  
Senator Clayton Hee, Vice Chair  
Thursday, January 31, 2008, 9:00 a.m.  
State Capitol, Conference Room 016

By

Thomas R. Keller  
Administrative Director of the Courts

**WRITTEN TESTIMONY ONLY**

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**Bill No. and Title:** Senate Bill No. 2400, Relating to Decriminalization of Minor Offenses pursuant to Act 124, Session Laws of Hawaii 2005.

**Purpose:** To decriminalize offenses outside the Penal Code pursuant to Act 124, SLH 2005.

**Judiciary's Position:**

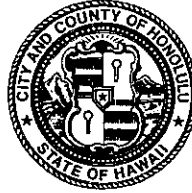
The Judiciary strongly supports this bill, which would fulfill the mandate of Act 124, Session Laws Hawaii 2005. Act 124 mandated that the Legislative Reference Bureau identify minor criminal offenses for which typically only a fine is imposed and which may be decriminalized, thus making resolution of these minor offenses as simple as possible for the average citizen and enabling police, prosecutors and the judiciary to focus resources on the most serious criminal offenses.

Thank you for the opportunity to provide testimony on this bill.

POLICE DEPARTMENT  
CITY AND COUNTY OF HONOLULU

801 SOUTH BERETANIA STREET · HONOLULU, HAWAII 96813  
TELEPHONE: (808) 529-3111 · INTERNET: www.honolulu.org

MUFI HANNEMANN  
MAYOR



BOISSE P. CORREA  
CHIEF

PAUL D. PUTZULU  
MICHAEL D. TUCKER  
DEPUTY CHIEFS

OUR REFERENCE EC-LC

January 31, 2008

The Honorable Brian T. Taniguchi, Chair  
Committee on Judiciary and Labor  
The Senate  
State Capitol  
Honolulu, Hawaii 96813

Dear Chair Taniguchi and Members:

Subject: Senate Bill No. 2400, Relating to Decriminalization of Minor Offenses Pursuant to Act 124,  
Session Laws of Hawaii 2005.

I am Captain Evan Ching of the Traffic Division of the Honolulu Police Department (HPD), City and  
County of Honolulu.

The HPD opposes Senate Bill No. 2400, relating to decriminalization of minor offenses pursuant to  
Act 124, Session Laws of Hawaii 2005. This bill will decriminalize certain offenses that the HPD feels are  
serious. We recommend that the following be amended:

1. Page 15, line 13: Unamend section 286-122, Hawaii Revised Statutes, Suspension of a License;  
Surrender. This offense is serious enough to act as a deterrent to those drivers who will defy this  
law. Although statistical data does not support this position, police feel that these drivers are a  
high risk to the community because of the violation committed to have their license taken.
2. Page 18, line 13: Unamend proposal to delete "guilty of a misdemeanor." The HPD position is  
that anytime a person manufactures or alters placards and identification cards, it costs the  
government more money but most importantly, it causes an identity problem. Therefore, in order  
to be a deterrent against this crime, it should not be amended.

The HPD urges your committee not to pass Senate Bill No. 2400 without considering the proposed  
amendments.

Thank you for the opportunity to testify.

Sincerely,

APPROVED:

  
for: BOISSE P. CORREA  
Chief of Police

  
EVAN CHING, Captain  
Traffic Division

Ken H. Takayama  
Acting Director

Research (808) 587-0666  
Revisor (808) 587-0670  
Fax (808) 587-0681



LEGISLATIVE REFERENCE BUREAU  
State of Hawaii  
State Capitol  
Honolulu, Hawaii 96813

## **SB2400**

### **RELATING TO DECRIMINALIZATION OF MINOR OFFENSES PURSUANT TO ACT 124, SESSION LAWS OF HAWAII 2005**

**Presented to the Senate Committee on  
Judiciary and Labor  
Twenty-fourth State Legislature, Regular Session of 2008  
By Ken H. Takayama, Acting Director  
or Ted Baker, Researcher  
Legislative Reference Bureau  
Thursday, January 31, 2008**

Chair Brian T. Taniguchi and Members of the Committee:

This bill represents the most recent step in a process that the Legislature started thirty years ago. Its purpose is to decriminalize minor offenses outside the Penal Code for which, typically, only a fine is imposed and which resemble traffic offenses that have been decriminalized since 1978. This will permit citizens to pay their fines by mail, instead of having to appear in court, and will permit police and prosecutors to concentrate their resources on the more important (i.e., "serious") criminal offenses.

The offenses to be decriminalized by this bill were identified through a process created by Act 124, Session Laws of Hawaii 2005, which involved collaboration between the Judiciary, the executive branch of state government and the Legislative Reference Bureau. Input was also received from the county prosecutors and police chiefs through the Attorney General. In drafting this legislation we took a number of factors into consideration:

- (1) We gave the most weight to the recommendation of the executive branch department with primary jurisdiction over the offense. Thus, where a department supported decriminalization but the prosecutors and police chiefs did not, we deferred to the department. We take no position on the merits of the respective positions and believe that is a decision the Legislature should make. The instances of disagreement were relatively rare and are noted in the discussion below.
- (2) Whenever the department opposed decriminalization we eliminated it from consideration, even if the prosecutors and police chiefs took no position.

- (3) In several instances, neither the department nor the prosecutors and police chiefs gave a response to a specific section; accordingly, those were included in the bill. Again, we believe that the Legislature should make the decision as to these offenses.
- (4) In several instances, either the departments or the prosecutors and police chiefs identified certain rule violations, for which the Judiciary was not able to give us information, but that fell into the class of traffic-like offenses that the Legislature has already decriminalized in other contexts. We included these offenses, which comprise, for example, parking violations in state parks and harbors.

The sections to be amended by the bill are summarized in the attachment to this testimony.

Thank you for the opportunity to testify on this legislation.

Attachment

**SUMMARY OF AMENDMENTS PROPOSED  
BY SB2400 (2008)**

- (1) Section 150A-14, HRS: This section provides the penalty for offenses committed in violation of statutes governing the importation of plants, nondomestic animals, and microorganisms by, for example, airlines, under section 150A-5, HRS. This change would decriminalize these violations. The Department of Agriculture supports decriminalization. The prosecutors and police chiefs do not.
- (2) Section 184-5, HRS: This section provides the penalty for offenses committed in violation of statutes and administrative rules governing the state park system. The bill would amend this section to make all traffic offenses committed in the state parks traffic infractions, to be disposed of like other traffic offenses disposed of pursuant to chapter 291D, HRS, with similar fines. Other rule violations including, for example, alcohol offenses, would remain petty misdemeanors. This change was suggested by the Department of Land and Natural Resources as well as the prosecutors and police chiefs.
- (3) Section 200-14, HRS: This section provides the penalty for offenses committed in violation of statutes and administrative rules governing the use of small boat harbors. The bill would amend this section to make all traffic offenses committed in small boat harbors traffic infractions to be disposed of like other traffic offenses disposed of pursuant to chapter 291D, HRS, with similar fines. This change was suggested by the Department of Land and Natural Resources.
- (4) Section 200-25, HRS: This section provides the penalty for violation of statutes and administrative rules governing the operation of vessels in state waters. The bill would decriminalize these offenses. Other rule violations including, for example, alcohol offenses, would not be changed. This change was suggested by the Department of Land and Natural Resources.
- (5) Section 200-26, HRS: This section prescribes the procedure for arresting offenders who violate statutes and rules penalized under section 200-25, HRS. Since the bill would decriminalize those offenses, the amendment to this section would delete the authority to arrest for these offenses and authorize issuance of citations instead. This change was suggested by the Department of Land and Natural Resources.
- (6) Section 200-74, HRS: This section provides penalties for violation of statutes governing vessel identification. The bill would decriminalize these offenses and establish fines consistent with those provide by section 200-25, HRS. This change was suggested by the Department of Land and Natural Resources.
- (7) Section 261-21, HRS: This section provides penalties for offenses of statutes and rules governing safety, security, and commercial activities in public airports.

While violation of rules governing motor vehicles and traffic movement in public airports is subject to only a fine, other offenses, including those involving baggage carts are a misdemeanor. This bill would decriminalize offenses involving baggage carts, dollies, and other similar devices and make them traffic infractions subject to chapter 291D, HRS. This change was suggested by the prosecutors and police chiefs.

- (8) Section 264-12, HRS: This section provides the penalty for violation of section 264-6, HRS, which typically involves unauthorized excavation or leaving a car parked or abandoned adjacent to a public highway. The bill would decriminalize this conduct but leave the \$250 maximum fine intact. Unauthorized excavation can be charged as criminal property damage under the Penal Code in the case of, for example, copper thieves, and the parking offense can be charged as a traffic infraction. The Department of Transportation did not object to this change. The prosecutors and police chiefs did object.
- (9) Section 264-102, HRS: This section provides the penalty for violation of section 264-111, HRS, which typically involves leaving a car parked with a "For Sale" sign adjacent to a public highway. The bill would decriminalize this conduct but leave the \$1,000 maximum fine intact. The Department of Transportation did not object to this change. The prosecutors and police chiefs did object.
- (10) Section 286-8, HRS: This section makes it a misdemeanor to violate rules governing the use of traffic control devices at highway work sites by those engaged in the highway work. Acts of recklessness or negligence at highway job sites that result in injury or death can be charged as crimes under the Penal Code. The bill would decriminalize this offense but leave the maximum \$1,000 fine intact. The Department of Transportation did not object to this change.
- (11) Section 286-29, HRS: This section makes it a misdemeanor for anyone to issue a vehicle inspection certificate if not authorized by the Department of Transportation to do so. This conduct can be charged under the Penal Code as forgery. The bill would decriminalize this offense but leave the \$1,000 maximum fine intact. The Department of Transportation did not object to this change. The prosecutors and police chiefs did object.
- (12) Section 286-136, HRS: This section provides the penalties for failure to surrender a driver's license after it is suspended by the court in violation of section 286-122, HRS, and hiring an unlicensed driver in violation of section 286-134, HRS. The bill would decriminalize the offenses but leave the \$1,000 maximum fine intact. The Department of Transportation did not object to this change. The prosecutors and police chiefs did object.
- (13) Section 286-214, HRS: This section makes it a misdemeanor to make or use a counterfeit motor carrier inspection certificate, to use the certificate on another vehicle, or to issue the certificate without an inspection. This conduct can be

charged under the Penal Code as forgery. The bill would decriminalize the offense but leave the \$1,000 maximum fine intact. The Department of Transportation did not object to this change. The prosecutors and police chiefs did object.

- (14) Section 286-249, HRS: This section prohibits driving a commercial vehicle without a commercial driver's license or while the license is suspended. The bill would decriminalize driving a commercial vehicle without a commercial driver's license but leave intact the maximum lifetime disqualification from driving a commercial vehicle and the \$1,000 maximum fine. It would not change the penalty for driving a commercial vehicle while the commercial driver's license is suspended. The Department of Transportation did not object to this change. The prosecutors and police chiefs did object.
- (15) Section 291-52.7, HRS: This section makes it a misdemeanor to fraudulently manufacture, alter, or use a removable "handicapped" parking placard. The bill would decriminalize this offense but impose a maximum \$1,000 fine, consistent with the false certificate fines in sections 286-29 and 286-214, HRS. The Department of Transportation did not object to this change. The prosecutors and police chiefs did object.
- (16) Section 291C-205, HRS: This section makes it a misdemeanor to possess a moped or certain moped parts, knowing that the serial number has been altered or erased. The bill would decriminalize the offense but impose a maximum \$1,000 fine. The Department of Transportation did not object to this change. The prosecutors and police chiefs did object.