



Testimony to the House Committee on Judiciary

The Honorable Tommy Waters, Chair
The Honorable Blake K. Oshiro, Vice Chair
Tuesday, March 11, 2008, 2:00 p.m.
State Capitol, Conference Room 325

By

Thomas R. Keller
Administrative Director of the Courts

WRITTEN TESTIMONY ONLY

Bill No. and Title: Senate Bill No. 2400, S. D. 1, 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.

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TESTIMONY OF THE STATE ATTORNEY GENERAL TWENTY-FOURTH LEGISLATURE, 2008

ON THE FOLLOWING MEASURE:

S.B. NO. 2400, S.D. 1, RELATING TO DECRIMINALIZATION OF MINOR OFFENSES PURSUANT TO ACT 124, SESSION LAWS OF HAWAII 2005.

BEFORE THE:

HOUSE COMMITTEE ON JUDICIARY

DATE: Tuesday, March 11, 2008 **TIME:** 2:00 PM

LOCATION: State Capitol Room 325
Deliver to: Committee Clerk, Room 302, 5 copies

TESTIFIER(S): Mark J. Bennett, Attorney General
or Lance M. Goto, Deputy Attorney General

Chair Waters and Members of the Committee:

The Department of the Attorney General appreciates the intent of this measure, but has concerns.

The purpose of this bill is to decriminalize minor criminal offenses that were identified as being those for which a fine is typically imposed. The bill is intended to simplify the resolution of these minor offenses and ensuring that police, prosecutorial, and judicial resources are focused on the more serious criminal offenses.

Our primary concern is that, while the bill achieves its purpose by deleting references to misdemeanors, petty misdemeanors, and jail sentences, the bill is not always clear about what kind of offense is being created, and accordingly, how they are to be processed. In sections 3 and 4, regarding parking and traffic infractions, the bill clearly specifies that these offenses would be handled under the chapter 291D, Hawaii Revised Statutes, process already established for the adjudication of traffic infractions. But as to other offenses, particularly ones that are not traffic infractions, the bill is not clear about whether they are criminal violations that must still be processed like other criminal offenses through the courts, or some kind of civil infraction that might be handled through a separate administrative process. The enforcement

and processing of these cases will be different, depending on whether they are criminal violations or administrative civil infractions.

If they are civil infractions that are to be handled outside the court system, then existing provisions that include the court and court process need to be amended. For example, sections 5 and 6 of the bill still refer to the court and court process. In section 11, on page 14, lines 17-18, the wording still provides, "in addition to any other penalty imposed by law." But the only intended penalty appears to be a fine.

LINDA LINGLE
Governor



SANDRA LEE KUNIMOTO
Chairperson, Board of Agriculture

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TESTIMONY OF SANDRA LEE KUNIMOTO
CHAIRPERSON, BOARD OF AGRICULTURE

BEFORE THE HOUSE COMMITTEE ON JUDICIARY
TUESDAY, MARCH 11, 2008
2:00 P.M.

SENATE BILL NO. 2400, S.D. 1
RELATING TO DECRIMINALIZATION OF MINOR OFFENSES
PURSUANT TO ACT 124, SESSION LAWS OF HAWAII 2005

Chairperson Waters and Members of the Committee:

Thank you for the opportunity to testify on Senate Bill No. 2400, S.D. 1. The purpose of this bill is to make resolution of minor criminal offenses, including traffic violations, as simple as possible for the average citizen and to ensure that police, prosecutor, and judicial resources are focused on the most criminal offenses. The Department of Agriculture opposes this bill as it relates to Part II, Section 2, which covers Agriculture and Animals.

The Department initially favored decriminalizing violations under section 150A-5, Hawaii Revised Statutes (HRS) in view of the benefits identified in the Act 124, Session Laws of Hawaii 2005, process. However, on further reflection, the Department has concerns over the negative impact of decriminalization, particularly on limited staff resources. The Department asks that section 150A-5, HRS, violations remain status quo, so that the Department can take a comprehensive look at the whole enforcement

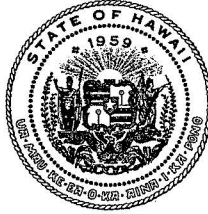
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and adjudicative structure for chapter 150A, HRS, violations. This will enable the Department to assess the potential impact of decriminalization of certain chapter 150A, HRS, violations, as well as the chapter 150A, HRS, enforcement scheme.

The Department recommends that Part II, Section 2 of Senate Bill No. 2400, S.D. 1, be deleted its entirety from this measure. Thank you for the opportunity to testify on this bill.

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LINDA LINGLE
GOVERNOR OF HAWAII



**STATE OF HAWAII
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ENGINEERING
FORESTRY AND WILDLIFE
HISTORIC PRESERVATION
KAHOOLAWE ISLAND RESERVE COMMISSION
LAND
STATE PARKS

**TESTIMONY OF THE CHAIRPERSON
OF THE BOARD OF LAND AND NATURAL RESOURCES**

**On Senate Bill 2400, Senate Draft 1 - RELATING TO DECRIMINALIZATION OF
MINOR OFFENSES PURSUANT TO ACT 124, SESSION LAWS OF HAWAII 2005**

**BEFORE THE HOUSE COMMITTEE ON
JUDICIARY**

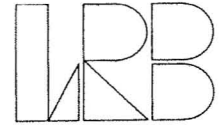
March 11, 2008

The purpose of Senate Bill 2400, Senate Draft 1 is to decriminalize minor offenses outside the Penal Code pursuant to Act 124, Session Laws of Hawaii 2005. The Department of Land and Natural Resources is in support of the proposed amendments to PART III, and defers to the appropriate agencies on all other parts of the bill.

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SB2400, SD1
RELATING TO DECRIMINALIZATION OF MINOR OFFENSES PURSUANT TO
ACT 124, SESSION LAWS OF HAWAII 2005

Testimony by the Legislative Reference Bureau
Ken H. Takayama, Acting Director
or Ted Baker, Researcher

Presented to the House Committee on Judiciary

Tuesday, March 11, 2008, 2:00 p.m.
Conference Room 325

Chair Waters 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, if 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.

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- (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

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**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.

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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

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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.

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THE HONORABLE TOMMY WATERS, CHAIR
HOUSE COMMITTEE ON JUDICIARY
Twenty-Fourth State Legislature
Regular Session of 2008
State of Hawaii

March 11, 2008

**RE: S.B. 2400, S.D. 1; RELATING TO DECRIMINALIZATION OF MINOR OFFENSES
PURSUANT TO ACT 124, SESSION LAWS OF HAWAII 2005.**

Chair Waters and members of the House Committee on Judiciary, the Department of the Prosecuting Attorney of the City and County of Honolulu submits the following testimony in opposition to Senate Bill 2400, S.D. 1.

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). Furthermore, if the offenses are decriminalized to civil, it is unclear to us what due process is contemplated if the person wishes to contest the infraction; will there be an administrative hearing provided? We are also unclear whether the police would have the authority to enforce the civil infraction or whether the state department would be the enforcing agencies.

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 (Hawaii Revised Statutes section 264-101) is currently a petty misdemeanor. It is typically used when the police get complaints that the

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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 14.

For these reasons, we oppose Senate Bill 2400, S.D. 1 as currently written.

Thank you for this opportunity to testify.