



TESTIMONY OF THE STATE ATTORNEY GENERAL TWENTY-FIFTH LEGISLATURE, 2009

ON THE FOLLOWING MEASURE:

H.B. NO. 147, H.D. 1, RELATING TO THEFT IN THE SECOND DEGREE.

BEFORE THE:

SENATE COMMITTEE ON JUDICIARY AND GOVERNMENT OPERATIONS

DATE: Tuesday, April 7, 2009 **TIME:** 9:30 AM

LOCATION: State Capitol, Room 016

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

Chair Taniguchi and Members of the Committee:

The Department of the Attorney General opposes this bill.

This bill would increase the threshold value of property and services for the offense of theft in the second degree from \$300 to an amount to be determined.

In 2005, the Penal Code Review Committee fully considered and rejected a proposal to increase the threshold value for theft. The Committee included representatives of the Judiciary, the Attorney General, the police, the prosecutors, the public defenders, the private defense bar, and the paroling authority. The Review Committee also solicited input from all of the county police and prosecutor agencies, the state and county bar associations, and the Electronic Commerce Crimes Task Force.

The threshold value for theft in the second degree should not be increased. The current value of \$300 is an appropriate amount. To put this in perspective, a minimum wage worker earning \$7.25 per hour would earn \$290 in a forty-hour week. Increasing the threshold value would diminish the seriousness of many theft crimes and reduce the deterrent effect of the theft offenses.

Under this bill, theft of property or services valued between \$100 and the new amount for theft in the second degree would be only a misdemeanor offense. As such, the many convicted misdemeanor offenders, who are felony offenders under the current law, would not

receive the appropriate level of treatment, counseling, and supervision that they now receive from felony probation services. This bill would reduce the deterrent effect against crime, while at the same time reducing the level of services to offenders, and thus would likely increase the rate of recidivism.

We respectfully request that this bill be held.

**Testimony of the Office of the Public Defender,
State of Hawaii to the Senate Committee on Judiciary
And Government Operations**

April 7, 2009

H.B. No. 147 HD1: RELATING TO THEFT IN THE SECOND DEGREE

Chair Taniguchi and Members of the Committee:

H.B. No. 147 HD1 would alter the dollar threshold level for felony theft from the current \$300 to an undetermined amount. We support this bill because it would eliminate, as felonies, cases where an offender does not knowingly commit an offense which an offender would reasonably believe is punishable by a five-year prison term.

The rise in prices of all consumer items has resulted in the threshold amount for felony theft being very low. 1986 was the last time the threshold amount was raised when it went from \$200 to the current \$300. (1986 Session laws of Hawaii, Act 314). The raising of the level would not prevent the courts from imposing prison terms for theft. Even if treated as a misdemeanor, an offender could receive up to a one-year term of prison. In reality, very few felony theft offenders, unless they have a prior felony conviction, receive the possible five-year jail term. The vast majority of these cases are currently resolved by placing the offender on either a deferred acceptance of plea, or probation.

Thank you for the opportunity to comment on this bill.

DEPARTMENT OF THE PROSECUTING ATTORNEY
CITY AND COUNTY OF HONOLULU

ALII PLACE
1060 RICHARDS STREET • HONOLULU, HAWAII 96813
PHONE: (808) 547-7400 • FAX: (808) 547-7515

PETER B. CARLISLE
PROSECUTING ATTORNEY



Douglas S. Chin
FIRST DEPUTY PROSECUTING ATTORNEY

THE HONORABLE BRIAN TANIGUCHI, CHAIR
SENATE COMMITTEE ON JUDICIARY AND GOVERNMENT OPERATIONS
Twenty-fifth State Legislature
Regular Session of 2009
State of Hawai'i

April 7, 2009

RE: H.B. 147, H.D. 1; RELATING TO THEFT IN THE SECOND DEGREE.

Chair Karamatsu and members of the House Committee on Judiciary, the Department of the Prosecuting Attorney submits the following testimony in opposition to HB 147, H.D. 1.

The purpose of this bill is to amend the threshold for Theft in the Second Degree, a class C felony. Under the current statutes, Theft in the Second Degree requires that the property or services stolen exceed \$300; under H.B. 147, H.D. 1 the threshold amount is left blank.

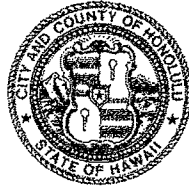
We strongly oppose this bill as we understand the purpose is to increase the felony theft threshold. We believe that there is no justification to change the current threshold and that the current \$300 level is appropriate given conditions in Hawaii. Even though Hawaii has a minimum wage higher than the federal minimum wage, at \$7.25 an hour it would take more than 41 hours to earn \$300 prior to any deductions. To earn a net value of \$300 would take substantially longer than 41 hours of work. Thus given the impact on most people, we think the \$300 threshold for felony theft is reasonable and justified.

We also note that the 2005 Penal Code Review Committee discussed and rejected the possibility of raising the threshold for felony theft. For that reason, when the committee's recommendations were presented to the 2006 legislature, a change in the threshold for felony theft was not included. We do not believe there has been any change in circumstances from 2005 when the committee discussed this issue that justifies an increase now in the felony theft threshold.

For these reasons, we strongly oppose HB 147, H.D. 1 and respectfully request that it be held. Thank you for this opportunity to testify.

POLICE DEPARTMENT
CITY AND COUNTY OF HONOLULU
801 SOUTH BERETANIA STREET · HONOLULU, HAWAII 96813
TELEPHONE: (808) 528-3111 · INTERNET: www.honolulu-pd.org

MUF1 HANNEMANN
MAYOR



BOISSE P. CORREA
CHIEF

PAUL D. PUTZULU
KARL A. GODSEY
DEPUTY CHIEFS

OUR REFERENCE KS-BA

April 7, 2009

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

Dear Chair Taniguchi and Members:

Subject: House Bill No. 147, H.D. 1, Relating to Theft in the Second Degree

I am Major Kenneth Simmons of District 4 (Kaneohe Police Station) of the Honolulu Police Department, City and County of Honolulu.

The Honolulu Police Department opposes House Bill No. 147, H.D. 1, Relating to Theft in the Second Degree.

House Bill No. 147, H.D. 1, proposes to raise the value for Theft in the Second Degree from \$300 to an unspecified amount. This increase would consign the majority of thefts to the status of a misdemeanor offense, thereby removing any deterrent for the perpetrator to stop this conduct. We believe this would adversely affect our community.

In the past, the legislature amended the theft section by increasing and aligning the dollar amount of the property or services taken so that each offense consisted of a greater dollar amount. This realignment involved raising the monetary value for Theft in the Second Degree from \$200 to \$300. Their comments at the time were that the increase would more accurately reflect current property values and the seriousness of the crime.

The theory behind the gradation of theft offenses was that more serious crimes should face more serious penalties. Seriousness was then based on the monetary value of the property or services stolen and the manner in which the theft was committed. That legislature believed, as do we, that those who took items of greater value or in a more dangerous manner committed greater social harm. They believed that people may look upon thefts of items of lesser value as not as serious an offense and so may be more likely to commit this crime.

The Honorable Brian T. Taniguchi, Chair
and Members
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April 7, 2009

We concur with this, and we believe that increasing the monetary value for theft of property or services from \$300 to an unspecified amount would actually increase the number of thefts. Thieves could actually take up to the limit of the unspecified amount worth of property or services because the deterrent would have been removed, and this crime would now only be a misdemeanor offense.

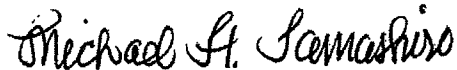
As it is, perpetrators who commit misdemeanor offenses receive a "slap on the wrist" and are rarely incarcerated in contrast to those individuals who are convicted for felony theft offenses. As a result, felons may be incarcerated or placed on probation, then monitored by a probation officer. This monitoring includes periodic checks by the probation officer as well as certain rules that must be adhered to or the offender will be re-incarcerated. This may not seem like much, but it takes the perpetrator out of the community for a while.

In conclusion, raising the value of the felony theft statute would not help law enforcement's efforts to wage war on property crime perpetrators. In fact, it would be like opening Pandora's box and allowing the perpetrators to have full reign in our community.

We strongly urge you to oppose House Bill No. 147, H.D. 1, Relating to Theft in the Second Degree.

Thank you for the opportunity to testify.

Sincerely,



FOR KENNETH SIMMONS, Major
District 4

APPROVED:


for: BOISSE P. CORREA
Chief of Police

COMMUNITY ALLIANCE ON PRISONS

76 North King Street, Honolulu, HI 96817

Phone/E-Mail: (808) 533-3454/kat.caphi@gmail.com



COMMITTEE ON JUDICIARY AND GOVERNMENT OPERATIONS

Sen. Brian Taniguchi, Chair

Sen. Dwight Takamine, Vice Chair

Tuesday, April 7, 2009

Room 016

9:30 A.M.

SUPPORT

HB 147 HD1 – Theft in the Second Degree

JGOTestimony@capitol.hawaii.gov

Aloha Chair Taniguchi, Vice Chair Takamine and Members of the Committee!

My name is Kat Brady and I am the Coordinator of Community Alliance on Prisons, a community initiative working to improve conditions of confinement for our incarcerated individuals, enhance Hawai'i's quality of justice, and promote public safety. We come today to speak for the 6,000+ individuals whose voices have been silenced by incarceration, always mindful that more than 2,000 of those individuals are serving their sentences abroad, thousands of miles from their homes and loved ones.

HB 147 HD1 increases the minimum value of stolen property or service constituting theft in the second degree from \$300 to an unspecified dollar amount.

Community Alliance on Prisons supports this measure. Our support of this measure is for the following reasons:

1. Theft is a crime committed largely by substance abusers who steal to feed their drug habit;
2. The rising cost of incarceration does not justify sending low-level offenders to prison, when substance abuse treatment would be more effective and appropriate;
3. The theft statute has not been updated since 1986, when it was increased from \$200 to \$300

A quick search of theft statutes in other jurisdictions revealed the following sentences for theft:

Kentucky	Felony Theft - \$500 (HB 369 signed into law 3.27.09)
Georgia	Felony Theft - \$500 or more
Colorado	Felony Theft - \$500 or more
Kansas	Felony Theft - \$1,000 or more

The Sentencing Project's Report *Incarceration and Crime: A Complex Relationship* (2006) highlights the marginal connection between mass imprisonment and reduced crime. The Report concludes that *"the persistent removal of persons from the community to prison and their eventual return has a destabilizing effect that has been demonstrated to fray family and community bonds, and contribute to an increase in recidivism and future criminality."*

Moreover, the Report concludes that alternatives approaches to reduce crime, such as treatment and intervention, are more cost effective and protect families. Accordingly, we must invest in programs that have proven effective in reducing recidivism. If Hawai'i treated substance abuse as the public health problem that it is, we would build a healthier and safer society for all.

Mahalo for this opportunity to testify.



Senator Brian Taniguchi, Chair
Senator Dwight Takamine, Vice Chair
Committee on Judiciary and Government Operations

HEARING Tuesday, April 7, 2009
9:30 am
Conference Room 016
State Capitol, Honolulu, Hawaii 96813

RE: HB147, HD1, Relating to Theft in the Second Degree

Chair Taniguchi, Vice Chair Takamine, and Members of the Committee:

Retail Merchants of Hawaii (RMH) is a not-for-profit trade organization representing 200 members and over 2,000 storefronts, and is committed to support the retail industry and business in general in Hawaii.

RMH strongly opposes HB147, HD1, which increases the minimum value of stolen property or services constituting theft in the second degree from \$300 to an unknown amount. We suggest that this amount should be decreased rather than increased.

The National Retail Federation estimates that the value of merchandise lost to theft is .9% of annual sales. If we apply that same percentage to retail sales in Hawaii (\$24 billion in 2007), the loss is over \$21 million.

Our Loss Prevention professionals report that there are chronic shoplifters that know the system and actually calculate the value of the merchandise they are stealing to keep under the \$300 amount to avoid prosecution and serious penalties. The retailer is never compensated and has absolutely no hope of recovery. For a small business, a loss of almost 1% of sales is huge. There is absolutely no compelling reason for this increase.

But, more importantly, this measure is not limited to shoplifting; we must remember that it applies to individuals as well. We should ask ourselves just how many hours one must work to afford an item worth \$300, or \$500, or \$1,000. If stolen, the loss to the victim is tremendous. If classified as a misdemeanor, there is little or no consequence for the thief.

The members of the Retail Merchants of Hawaii respectfully urge you to hold HB147, HD1. Thank you for your consideration and for the opportunity to comment on this measure.

A handwritten signature in cursive script that reads 'Carol Pregill'.

Carol Pregill, President



766 Pohukaina St
Honolulu, Hawaii 96813
(808) 591-2550

Senator Brian T. Taniguchi, Chair
Senator Dwight Y. Takamine, Vice Chair
Members of the Committee on Judiciary and Government Operations

HEARING Tuesday April 7, 2009
9:30 am
Conference Room 016
State Capitol
415 South Beretania Street

RE: HB147, HD 1: Relating to Theft in the Second Degree

Chair Taniguchi, Vice Chair Takamine and Members of the Committee:

My name for the record is Newell Hirata and I am the Loss Prevention Manager for the ABC Stores.

The ABC Stores strongly opposes HB147, HD1 which increases the minimum value of stolen property or services constituting theft in the second degree from \$300 to \$1,000.

In the first quarter of 2009, our stores have generated approximately 120 inter-company e-mails warning each other of known shoplifters, shoplifting incidents, or shoplifting attempts. Our current pace, should it continue, will exceed our 2008 numbers by 20%. Statistically for the ABC Stores, crime is up not down. There are probably many thefts that also go unreported and will never make its way into HPD's statistics.

While we all struggle to make ends meet in this economy, our efforts should be focused on our customers. We should be focused on providing our visitors with an unforgettable memory of their time in our islands which includes their shopping experience.

It has been my experience over the last 24 years with the ABC Stores that shoplifters are aware of the thresholds and will steal up to the misdemeanor limit and be cautious not to enter the felony level.

Raising the limits will allow shoplifters to triple their thefts and will force business to keep a closer eye on their stores at the expense of servicing their customers. In addition to this bill affecting customer service, it will also affect prices. Retailers will be forced to charge more for an item to make up for the loss profits, due to the rise in shoplifting. Ultimately, this will hurt Hawaii's reputation as an affordable vacation spot. Since we are already battling this perception, I see bill HB147, HD1 doing nothing more than making it even worse.

Thank you for your consideration and I urge you to hold HB147, HD1

Aloha and Mahalo,

Newell Hirata
Loss Prevention Manager

4/6/09



April 6, 2009

Senator Brian Taniguchi, Chair
Senator Dwight Takamine, Vice Chair
Committee on Judiciary and Government Operations

HEARING Tuesday April 7, 2009
 9:30 a.m.
 Conference Room 016
 State Capitol, Honolulu, Hawaii 96813

RE: HB147, HD1, Relating to Theft in the Second Degree

Chair Taniguchi, Vice Chair Takamine, and Members of the Committee:

I am Shawn Kalima, Loss Prevention Manager for DFS Hawaii. DFS continues to be the world's most trusted and respected luxury travel retailer. As such, DFS strives to meet the ever-evolving needs of travelers to Hawaii with the most prestigious brands and high quality destination-specific merchandise.

DFS Hawaii strongly opposes HB147, HD1, which increases the minimum value of stolen property or services constituting theft in the second degree from \$300 to an unknown amount.

The high-quality and desirability of the merchandise we offer already has built-in vulnerabilities to theft, specifically shoplifting. Be it the result of current economic conditions and/or a noticeable influx of "active players" (chronics) in the Waikiki district, we've experienced an increase of shoplift and suspicious-activity incidents at our DFS Galleria Waikiki Store over the past few months. Increasing the minimum from \$300 to an unknown amount only reduces the consequences to potential thieves, many of whom are repeat offenders. Conversely, the element of risk to our store is elevated significantly.

I respectfully urge you to hold HB147, HD1. Thank you for your consideration and for the opportunity to comment on this measure.

Shawn Kalima
Loss Prevention Manager
DFS Hawaii

Senator Brian Taniguchi, Chair
Senator Dwight Takamine, Vice Chair
Committee on Judiciary and Government Operations

HEARING
Tuesday, April 7, 2009
9:30 am
Conference Room 016
State Capitol, Honolulu, Hawaii 96813

RE: **HB147, HD1, Relating to Theft in the Second Degree**

Chair Taniguchi, Vice Chair Takamine, and Members of the Committee:

I am Vice President of Republic Retailers Inc. and we own several surf shops in Hawaii. We have been in business for 8 years and have 32 employees.

Republic Retailers Inc. strongly opposes HB147, HD1, which increases the minimum value of stolen property or services constituting theft in the second degree from \$300 to an unknown amount.

We cannot have this amount increased. I have recently been able to successfully prosecute thieves who stole 4 skateboards from my store which are valued at over \$600. These individuals had already had a record and far from upstanding citizens. They obviously had only received a slap on the wrist and then went out to commit more crimes. Unfortunately I can guarantee you that the decreased risk due to the threshold being raised from \$300 will only spur on more theft. Do not allow this to happen. We need to stop these criminals from stealing from hard working small business like mine who are just trying to make a living.

I respectfully urge you to hold HB147, HD1. Thank you for your consideration and for the opportunity to comment on this measure.



Shyrak Maurer
Vice President
Republic Retailers Inc.

April 6, 2009

Senator Brian T. Taniguchi, Chair
Senator Dwight Y. Takamine, Vice Chair
Committee on Judiciary and Government Operations

HEARING Tuesday, April 7, 2009
 9:30 a.m.
 Conference Room 016
 State Capitol, Honolulu, Hawaii 96813

RE: HB147, Relating to Theft in the Second Degree

Chair Taniguchi, Vice Chair Takamine and Members of the Committee:

My name is Steven Ige and the I am currently a student in the Master of Social Work Program at the University of Hawaii at Manoa and a concerned citizen.

As a recent victim of a Theft in the Second Degree crime, I strongly oppose HB 147, which increases the minimum value of stolen property or services constituting theft in the second degree from \$300 to an unspecified amount.

I feel that minimizing a crime such as Theft in the Second Degree and classifying it as misdemeanor is not appropriate at this time. It is my opinion that raising the threshold for a felony theft to any amount above \$300 would not be a sufficient deterrent. In addition, those who commit these crimes would have less regard for consequences.

I respectfully urge you to hold HB 147. Thank you for your consideration and for the opportunity to comment on this measure.

Sincerely,

Steven Ige