

**Testimony of the Office of the Public Defender,
State of Hawaii to the Senate Committee on
Judiciary and Labor**

February 5, 2013

S.B. No. 570: RELATING TO THEFT

Chair Hee and Members of the Committee:

S.B. No. 570 would increase the dollar threshold level for felony theft from the current \$300 to \$750. We support this bill because it would eliminate, as felonies, cases where value of the property taken is less than \$750.

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.

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COMMITTEE ON JUDICIARY AND LABOR

Sen. Clayton Hee, Chair

Sen. Maile Shimabukuro, Vice Chair

Tuesday, February 5, 2013

10:00 a.m.

Room 016

SUPPORT FOR SB 570 - THEFT

Aloha Chair Hee, Vice Chair Shimabukuro and Members of the Committee!

My name is Kat Brady and I am the Coordinator of Community Alliance on Prisons, a community initiative promoting smart justice policies for more than a decade. This testimony is respectfully offered on behalf of the 5,800 Hawai'i individuals living behind bars, always mindful that approximately 1,500 individuals are serving their sentences abroad, thousands of miles away from their loved ones, their homes and, for the disproportionate number of incarcerated Native Hawaiians, far from their ancestral lands.

SB 570 increases the threshold value of property or services from \$300 to \$750 under the offense of theft in the second degree.

Community Alliance on Prisons supports this measure.

Hawai'i's threshold for felony theft has remained at \$300 and not been updated since 1986. Understanding the increasing costs of incarceration and that theft is primarily a crime that is fueled by substance abuse, many states have sought ways to address the theft felony threshold.

Community Alliance on Prisons has been researching this issue for more than a decade to get a landscape view of how other states deal with theft. Our research shows that Hawai'i has remained at the low-end of the threshold for felony theft and that the range for the felony threshold varied from \$200 - \$3,000.

We the decided that an impartial way to determine a proper threshold for Hawai'i's felony theft would be to go to the Bureau of Labor Statistics¹ and use their Inflation Calculator to see what \$300 in 1986 would equate to in 2012.

Calculating the inflation rate from 1986 to 2012, the Bureau of Labor Statistics determined that \$300 in 1986 equates to \$628.45 in 2012. When one adjusts for the 'paradise tax' of +30%, that adds another \$188.54 meaning that \$300 in Hawai'i in 1986 would equate to \$817 in 2012.

¹ Bureau of Labor Statistics - Inflation Calculator http://www.bls.gov/data/inflation_calculator.htm

The Pew Center on the States' Public Safety Performance Project reported:

The length of time served in prison has increased markedly over the last two decades, according to a new study by Pew's Public Safety Performance Project. Prisoners released in 2009 served an average of nine additional months in custody, or 36 percent longer, than offenders released in 1990.

Several states have reclassified or redefined criminal offenses in recent years; such changes impact sentence length and, ultimately, Length of Stay (LOS) in prison. In many states, the monetary value of stolen goods necessary to trigger a felony was established decades ago and has not been adjusted to keep pace with inflation. The result is that someone can have a longer sentence for a property crime today for the theft of less valuable material goods than in the past. In 2010, South Carolina revised several offense definitions and increased the monetary value threshold that triggers a felony charge for certain property offenses. A number of other states – including Alabama (2003), Arkansas (2011), California (2009), Delaware (2009), Montana (2009), and Washington (2009) – also have raised the felony threshold dollar amount for various theft offenses.²

Property offenders released in West Virginia and Hawaii in 2009 served 3.2 and 3.3 years on average, a full year longer than the national average³ (see Table 3). South Dakota and Tennessee tied for the shortest average LOS for property offenders released in 2009, at 1.3 years in each state, a full year less than the average. (page 18).

Since the national average of time spent is 1 year less than Hawai'i, our taxpayers are spending \$46,355 per incarcerated individual serving time for a property offense.⁴

Community Alliance on Prisons has been asserting that sending low level lawbreakers to prison is paying to send individuals to criminal college.

NPR had a story on February 1, 2013⁵ that cited the work of Donald T. Hutcherson II, a sociology professor at Ohio University in Lancaster, who recently decided to tackle the question by mining the vast data in the U.S. government's National Longitudinal Survey of Youth.

The survey conducts incredibly detailed and confidential interviews, and then repeats those interviews with the same people year after year – often going to extraordinary lengths to track

² TIME SERVED - The High Cost and Low Returns of Longer Prison Sentences, Pew Center on the States, Public Safety Performance Project, page 39, June 2012.

<http://www.pewstates.org/research/reports/time-served-85899394616>

³ The national average is 2.3 years.

⁴ TIMESERVED, Hawai'i Fact Sheet.

<http://www.pewstates.org/research/state-fact-sheets/time-served-in-hawaii-85899396333>

⁵ **When Crime Pays: Prison Can Teach Some To Be Better Criminals**, SHANKAR VEDANTAM, February 01, 2013. <http://www.npr.org/2013/02/01/169732840/when-crime-pays-prison-can-teach-some-to-be-better-criminals> Listen to the Story

<http://www.npr.org/player/v2/mediaPlayer.html?action=1&t=1&islist=false&id=169732840&n=170823697>

down those who may have moved overseas or ended up in prison.

Included in the survey are questions about how much money individuals make legally and illegally. Because the survey also ascertains whether people have spent time in prison, Hutcherson pored through data from tens of thousands of queries to a large number of young people to establish whether illegal earnings went up or down after individuals served time.

If prison reformed criminals, illegal earnings once people were released ought to have gone down. But if prison was a "finishing school" for criminals, illegal earnings after serving time should have increased.

"Spending time in prison leads to increased criminal earnings," Hutcherson says. "On average, a person can make roughly \$11,000 more [illegally] from spending time in prison versus a person who does not spend time in prison."

We know that the retail merchants association will oppose any increase in the felony threshold, yet these merchants have insurance to cover their losses. The poor, over-burdened Hawai'i taxpayer, however, is burdened with a \$127 per day/\$46, 355 per year cost for incarcerating individuals convicted of felony theft. There is no insurance for us.

Community Alliance on Prisons respectfully asks the committee to consider the research, the situation of Hawai'i's taxpayers and to pass this measure.

Mahalo for this opportunity to submit our research on this important subject.



Senator Clayton Hee, Chair
Senator Maile S. L. Shimabukuro, Vice Chair
Committee on Judiciary & Labor

HEARING Tuesday, February 05, 2013
 10:00 am
 Conference Room 016
 State Capitol, Honolulu, Hawaii 96813

RE: **SB570, Relating to Theft**

Chair Hee, Vice Chair Shimabukuro, 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. The retail industry is one of the largest employers in the state, employing 25% of the labor force.

RMH strongly opposes SB570, which increases the threshold value of property or services from \$300 to \$750 under the offense of theft in the second degree.

The National Retail Federation estimates that the value of merchandise lost to theft is over 1% of annual sales. If we apply that same percentage to retail sales in Hawaii (\$29 billion in FY 2012), the loss is more than **\$290 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 1% of sales has a serious impact on their solvency.

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, or for how long one must save, to afford an item worth \$750. If stolen, the loss to the victim is devastating. If classified as a misdemeanor, there is little or no consequence for the thief. There is absolutely no rationally compelling reason for this increase.

The members of the Retail Merchants of Hawaii respectfully urge you to hold SB570. Thank you for your consideration and for the opportunity to comment on this measure.

Carol Pregill, President



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TO: COMMITTEE ON JUDICIARY AND LABOR

Senator Clayton Hee, Chair

Senator Maile S.L. Shimabukuro, Vice Chair

DATE: Tuesday, February 5, 2013

TIME: 10:00 a.m.

PLACE: Conference Room 016

FROM: Hawaii Food Industry Association - Lauren Zirbel, Executive Director

RE: SB 570 RELATING TO THEFT

POSITION: IN OPPOSITION

Chair & Committee Members:

HFIA strongly opposes increasing the threshold property and services valuation for theft in the second degree to more than \$750.

We don't believe that increasing the value of theft in the second degree to over \$750 will "help strengthen the State's public safety and corrections system." We believe it will only encourage theft and make it more difficult for retailers to discourage crime

The National Retail Federation estimates that the value of merchandise lost to theft is over 1% of annual sales. If we apply that same percentage to retail sales in Hawaii (\$24.3 billion in 2010), the loss is more than \$240 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.

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, or for how long one must save, to afford an item worth \$750. If stolen, the loss to the victim is tremendous. If classified as a misdemeanor, there is little or no consequence for the thief. There is absolutely no compelling reason for this increase.

The members of Hawaii Food Industry Association respectfully urge you to hold this bill.

Thank you for your consideration and for the opportunity to comment on this measure.