



The Judiciary, State of Hawai‘i

**Testimony to the
Senate Committee on Judiciary and Labor**
Senator Gilbert Keith-Agaran, Chair
Senator Maile S.L. Shimabukuro, Vice Chair

Monday, March 28, 2016, 9:00 a.m.
State Capitol, Conference Room 016

By

R. Mark Browning
Senior Judge, Deputy Chief Judge
Family Court of the First Circuit

Bill No. and Title: House Bill No. 2561, House Draft 1, Proposed Senate Draft 1 Relating to the Administration of Justice

Purpose: Enacts recommendations of the penal code review committee, convened pursuant to HCR 155 (2015).

Judiciary's Position:

The Judiciary respectfully notes a concern with one provision relating to the release of records when applied to juvenile records.

We respectfully suggest a friendly amendment, below, to address our concern.

House Bill No. 2561, House Draft 1, Proposed Senate Draft 1 allows the prosecuting attorney and counsel for the defendant to petition the court for all the records collected for the mental health examiners (see page 7, from lines 18). As applied to juveniles and juveniles records, this language may be overbroad and against statutory and public policy, both of which mandate confidentiality. This is particularly exacerbated by the possibility of releasing the confidential information and records in digital format. The “protective” ability of the court to apply “conditions the court determines appropriate” would be extremely difficult to enforce even if these confidential records are provided in hard copy or digital format. For example, if a court



House Bill No. 2561, House Draft 1, Proposed Senate Draft 1 Relating to the
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orders that said information shall not be used, directly or indirectly, in any other case against the defendant, there would be no reasonable way for anyone to know about a breach. In fact, the person who allegedly disobeyed this order may not be aware of the origin of the information or the relevant court order. The same type of problem also applies to the prohibition against re-disclosure except to the extent permitted by law. Besides state law, we also need to confront the violation of federal laws such as HIPAA (medical records), FERPA (school records), and releasing records of substance abuse evaluations and reports, which may be included in these juvenile records.

In a recent publication by the Justice Law Center, *Future Interrupted: The Collateral Damage Caused by Proliferation of Juvenile Records* (February 2016), the authors stated at page two “Research confirms—and the law recognizes—that youth have the capacity for change and rehabilitation, and yet records continue to erect barriers to youths’ success as they grow into adulthood. Modern technology exacerbates the problem as it facilitates access” The publication examines the collateral consequences faced by juveniles in the areas of education and employment.

We recommend a friendly amendment by adding the following qualifying language (in bold *and italics*) from Section 4, page 7, from line 18:

(8) The court shall obtain all existing relevant medical, mental health, social, police, and juvenile records, including those expunged, and other pertinent records in the custody of public agencies, notwithstanding any other ~~[statutes,]~~ statute, and make ~~[such]~~ the records available for inspection by the examiners~~[-]~~ in hard copy or digital format. The court may order that the records so obtained be made available to the prosecuting attorney and counsel for the defendant in either format, subject to conditions the court determines appropriate[.] ***provided that juvenile records shall not be made available unless constitutionally required.***

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

DEPARTMENT OF THE PROSECUTING ATTORNEY
CITY AND COUNTY OF HONOLULU

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THE HONORABLE GILBERT S.C. KEITH-AGARAN, CHAIR
SENATE COMMITTEE ON JUDICIARY AND LABOR
Twenty-Eighth State Legislature
Regular Session of 2016
State of Hawai`i

March 28, 2016

RE: H.B. 2561, H.D. 1, PROPOSED S.D. 1; RELATING TO THE ADMINISTRATION OF JUSTICE.

Chair Keith-Agaran, Vice Chair Shimabukuro, and members of the Senate Committee on Judiciary, the Department of the Prosecuting Attorney of the City and County of Honolulu (“Department”) submits the following testimony in general support of H.B. 2561, H.D. 1, Proposed S.D. 1, with specific areas of opposition or strong opposition.

Thank you for the opportunity to participate as members of the Penal Code Review Committee (“Committee”). While many areas of the Committee’s report were not unanimously agreed-upon by Committee members, each member committed an extraordinary amount of time and effort, and we commend all members for their dedication to this important area of law.

Areas of opposition:

Section 37-41 (pg. 72-77), would more than double the dollar-amount thresholds for multiple levels of theft. We strongly oppose these sections, as such drastic increases will greatly impact all theft victims, and the hardest hit will be local retailers—many of whom are small business owners—victimized by repeat or ‘professional’ offenders that are clearly aware of these threshold values. Although some proponents of these changes assert that Habitual property crime [Section 708-803, Hawaii Revised Statutes (“HRS”)] can address repeat offenders, **Habitual property crime does not pertain to petty misdemeanor offenses**. Thus, the proposed changes on page 74, lines 9 and 17, mean that a perpetrator could steal up to \$249.99 in merchandise or property every day, without ever qualifying for the higher offense of Habitual property crime.

While proponents of these drastic increases cite “inflation” as justification, such assertions are questionable when this approach is clearly not applied in other areas of the Penal Code. For example, all of the amounts listed in HRS §706-630, Authorized fines, were last increased in 1986, and have never been increased for inflation since then. Similarly, witness fees

(HRS §621-7) and jury fees (HRS §612-8) have not been increased since 1989 and 1986, respectively. If the Legislature wishes to consider inflation when determining the dollar amounts relevant to our criminal laws, the Department believes that a consistent and comprehensive review of all dollar amounts must be done, rather than the drastic and isolated proposals found in Sections 37-41. As written, these change will lead to greater harms to our legitimate, law abiding citizens, and hinder law enforcement from protecting the public from property crimes.

Section 52-56 (pg. 93-100) would remove the current sentencing requirements for various methamphetamine offenses. We are strongly opposed to these sections, as “meth trafficking” continues to tear apart countless families in Hawaii and leaves entire neighborhoods in disrepair, unlike any other drug in Hawaii. Today, methamphetamine still has the same destructive force that it did when these laws were initially passed, and there is no compelling reason to remove the specialized and consistent sentencing requirements that were designed to address this epidemic. If someone is convicted of meth trafficking and is, themselves, addicted to methamphetamine, they have likely had numerous opportunities to receive substance abuse treatment; and thus, incarceration would involve further, mandatory treatment, prolonged abstinence from the drug, and removal from the environment that previously allowed or promoted their substance abuse.

Section 70 (pg. 133-135) would make Sections 54, 55, and 56 retroactive, applicable to certain methamphetamine cases that are already pending or have already been sentenced, even if they are currently on appeal. The Department is strongly opposed to such retroactive application, as this would be highly irregular—particularly where sentences have already been handed down—and attempts to apply language and proposed procedures that are not only foreign to our courts and agencies, but may also create confusion and potential constitutional issues.

Section 20 (pg. 38) would remove § 712-1243 H.R.S., Promoting a dangerous drug in the third degree (“PDD3”), from the repeat offender mandatory minimum imprisonment statute. For those with substance abuse issues, our Penal Code already provides numerous mechanisms for diversion, treatment, deferral and/or expungement, which are typically utilized long before offenders reach the level of qualifying for these particular sentencing provisions. If substance abuse and other criminal activity continue to be a problem, retaining PDD3 in this statute precludes offenders from committing further serious crimes, ensures greater public safety, and makes it much more likely that such offenders will receive necessary treatment.

Section 44 (pg 84) attempts to clarify when the offense of Abuse of family or household member (HRS §709-906) occurs “in the presence of a minor.” Although our Department supports this intent, we believe a more effective way of doing this would be to amend HRS §709-906, to add the definition of “in the presence” that is already found in HRS §706-606.4 (or perhaps a reference thereto). Currently, our courts are forced to reach across chapters to utilize this definition that is found only in HRS §706-606.4, a sentencing statute. Because the definition in HRS §706-606.4 already encompasses the idea of “audio and visual” presence, it would clearly meet the Committee’s intent, without adding any new and potentially confusing terms.

Section 34 (pg. 65-66) would allow a married person to perpetrate certain types of sexual assault against their spouse. In today’s society, it is difficult to justify or even comprehend the outdated notion that a marriage license automatically gives license to sexually assault one’s spouse. Non-consensual sexual contact should not be allowed under any circumstances, even if the individuals are still legally married. Notably, no such exception exists for this type of sexual assault between romantic partners who are unmarried, nor between friends or acquaintances.

Section 42 (pg. 77-78) would repeal HRS §708-893(a), which addresses the “cybercrime” version of theft. This subsection was added in 2006, with the unanimous approval of the Legislature, in recognition of the devastation that these types of crimes have on victims. Any concern about this subsection results in a large number of cases—due to the prevalence of smart phones—is unfounded, as we have only charged 40 cases under this subsection since 2006. Of the over 2600 theft charges filed each year in 2014 and 2015, only 1 per year was also charged with HRS §708-893(a). Repealing this subsection would severely weaken our computer crime laws and eliminate an important tool needed to address the problem of computer crime in Hawaii

Section 10 (pg. 25-26) would allow courts to order temporarily hospitalization in lieu of revoking a defendant’s conditional release, but also sets a maximum length of hospitalization as one (1) year. Our Department strongly urges this Committee to remove the automatic cap, and give courts discretion to determine the appropriate period on a case-by-case basis.

Section 65 (pg. 112-123) makes non-substantive formatting changes to HRS §806-83, which apparently make the existing list easier to read. However, as indicated in the Penal Code Review Committee’s report (submitted to the Legislature December 30, 2015) on page 71, the Committee initially approved more substantial changes that would actually simplify HRS §806-83 by establishing a list of offenses that could not be charged by information. We strongly believe that those initial changes approved by the Committee are needed, as the current list of charges in HRS §806-83 is exorbitantly long, unruly, and also incomplete. Most offenses that existed before HRS §806-83 (established in 2004) were never added to the list, and even many offenses created or amended since 2004 seem to have been left out by mere oversight. As the Legislative Reference Bureau noted that such an amendment may be time consuming or complex, we have taken the liberty of extrapolating every class B and class C felony not currently listed in HRS §806-83, which is available for line-by-line review and comparison. The proposed amendments in S.B. 2423 and S.B. 2109 would not only complete the Committee’s goal of simplifying HRS §806-83, but would also minimize oversights and allow for flexibility to add future offenses as needed.

Areas of Support:

Section 32 (pg. 62) amends the definition of “sexual contact” for purposes of sexual assault charges, to remove the existing exception for perpetrators who are legally married to the victim. As noted above, non-consensual sexual contact should not be acceptable under any circumstances, whether married or not, and no such exception exists for unwanted sexual contact between romantic partners who are unmarried, nor between friends or acquaintances.

Section 59 (pg. 103) would clarify the definition of the term “alcohol”. The current definition includes a list of five (5) different forms or molecular compounds which relate to alcohol. However, the list currently contains items that are poisonous when ingested or are easily covered under the more familiar term proposed, ethanol. This proposal does not change the current definition of “Alcohol” but merely clarifies and simplifies the current definition.

Section 51 (pg. 93) would remove any ambiguity between HRS §712-1200(1)(a) and (1)(b), and ensure conformance with the legislative intent articulated by the Legislature, in its 1990 and 2012 amendments. The proposed changes would ensure that “prostitutes” charged under HRS § 712-1200(1)(a) and “johns” charged under HRS §712-1200(1)(b) would be legally distinguishable, and further ensure that the Legislature’s intent—to exclude anyone convicted of HRS §712-1200(1)(b) from deferral of plea and sentencing, under HRS §853-4—is upheld.

Section 68 (pg. 128-132) would add the phrase, “or no contest plea,” to subsection (11) and (12) of the deferral provisions. Although our Department does not believe that a loophole exists, in which a defendant may receive a deferral on two separate occasions, this change may help to clarify the intent that a defendant can only receive a deferral on one occasion, whether that be a deferral of a plea of guilty or deferral of a plea of no contest.

For these reasons, the Department of the Prosecuting Attorney of the City and County of Honolulu supports H.B. 2561, H.D. 1, Proposed S.D. 1, with specific areas of opposition or strong opposition. Thank you for the opportunity to testify on this.

Justin F. Kollar
Prosecuting Attorney

Jennifer S. Winn
First Deputy



Rebecca A. Vogt
Second Deputy

Diana Gausepohl-White
Victim/Witness Program Director

OFFICE OF THE PROSECUTING ATTORNEY

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TESTIMONY IN SUPPORT (WITH AMENDMENTS) OF
HB 2561, HD 1 – RELATING TO THE ADMINISTRATION OF JUSTICE

Justin F. Kollar, Prosecuting Attorney
County of Kaua'i

Senate Committee on Judiciary & Labor
March 28, 2016, 9:00 a.m., Conference Room 016

Chair Keith-Agaran, Vice-Chair Shimabukuro, and Members of the Committee:

The County of Kaua'i, Office of the Prosecuting Attorney, offers the following testimony in support, with amendments, of HB 2561, HD 1 – Relating to the Administration of Justice.

We were proud to participate as a member of the Penal Code Review Committee and its efforts resulting in the current proposed Bill. We applaud the efforts of all the participants and of Judge Steven Alm in working hard to achieve consensus in many critical areas. In most areas of discussion, consensus was achieved and necessary and desirable recommendations were arrived at. However, there were two areas of concern to our Office and to the other law enforcement agencies participating in the process that we wish to highlight in our testimony.

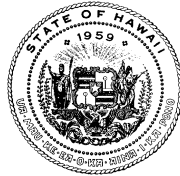
First, our Office opposes the provisions of Sections 37 and 38 that increase the dollar amount thresholds for Theft in the Second and Third Degrees. Theft from residents, visitors, and businesses remains a major law enforcement concern in our community and easing the offense thresholds would only exacerbate the situation and hinder law enforcement's ability to address the problem.

Second, our Office opposes the provisions of Sections 52-56 removing the current sentencing requirements for methamphetamine offenses. Methamphetamine remains a significant problem in our community and no

compelling reason exists to delete the currently applicable sentencing requirements.

Accordingly, we SUPPORT HB 2561, HD 1 but recommend that it be amended to delete Sections 37, 38 and 52-56. We request that Your Committee PASS the Bill with the amendments as described herein.

Thank you very much for the opportunity to provide testimony on this Bill.



**STATE OF HAWAII
DEPARTMENT OF HEALTH**

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**Testimony SUPPORTING HB2561, H.D.1
Relating to the Administration of Justice**

SENATOR GILBERT S. C. KEITH-AGARAN, CHAIR
SENATE COMMITTEE ON JUDICIARY AND LABOR

Hearing Date: March 28, 2016, 9:00 a.m. Room Number: 016

1 **Fiscal Implications:** Although positive fiscal impacts are not the primary focus of this bill, a
2 continuation in the increased rate of admissions to the Hawaii State Hospital (HSH) is possible if
3 this measure is not adopted, with concomitant increased expenditures in the HSH budget.

4 **Department Testimony:** With respect to the recommendations in Part 2, the Department of
5 Health (DOH) supports this measure. We would like to specifically comment on Part 2, pages 3
6 through 28 of the proposed S.D. 1.

7 The purpose of this bill is to enact recommendations of the penal code review committee
8 convened pursuant to HCR155, SD1 (2015) including changes to HRS §704-404, HRS §704-
9 411, HRS §704-712, HRS §704-713, and HRS §704-415.

10 With respect to Part 2, the DOH supports the enactment of all of the recommendations
11 made by the penal review committee with regards to chapter 704. DOH will modify policies and
12 procedures to align with these provisions should the measure be enacted. We note several
13 instances where the phrase “from within the department of health” in reference to an examiner
14 designated by the director of health in felony cases is deleted.

1 We understand that these proposed provisions to repeal the requirement that one member
2 of the panels be appointed from within the department is temporary and that mandatory
3 participation in forensic examinations by a state designated examiner from within the department
4 will be restored in two years. We understand that the intent is to provide flexibility in assigning
5 court ordered evaluations received by the DOH during a limited period of time while addressing
6 personnel shortages.

7 DOH appreciates these provisions and if enacted, the director will utilize the provided
8 discretion in assigning cases, if indicated, during this period and will remain committed to build
9 the workforce of employed examiners within the department who provide services pursuant to
10 HRS §704.

11 Thank you for the opportunity to testify.

12 **Offered Amendments:** None.

POLICE DEPARTMENT
CITY AND COUNTY OF HONOLULU

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KIRK CALDWELL
MAYOR

LOUIS M. KEALOHA
CHIEF

MARIE A. McCAULEY
CARY OKIMOTO
DEPUTY CHIEFS

OUR REFERENCE AY-SAI

March 28, 2016

The Honorable Gilbert S.C. Keith-Agaran, Chair
and Members
Committee on Judiciary and Labor
State Senate
Hawaii State Capitol
415 South Beretania Street
Honolulu, Hawaii 96813

Dear Chair Keith-Agaran and Members:

Subject: House Bill No. 2561, HD1, Proposed SD1, Relating to the
Administration of Justice

I am Aaron Takasaki-Young, Captain of District 1 (Central Honolulu) of the Honolulu Police Department, City and County of Honolulu.

The Honolulu Police Department opposes Part V, Section 37, specifically 708-831, Theft in the Second Degree, under House Bill No. 2561, HD1, Proposed SD1, Relating to the Administration of Justice. This bill will increase the monetary threshold to \$750 with regard to property and services.

We strongly oppose increasing the threshold amount for Theft in the Second Degree. There is a direct correlation between drug abuse and the offense of theft. Proceeds from misdemeanor theft offenses are used to fund illicit drug habits. Oftentimes we observe theft suspects in possession of drugs and drug paraphernalia. Also, misdemeanor theft offenders often do not qualify for programs such as Drug Court or HOPE probation. Prevention and treatment are important to reducing recidivism.

The system in place has been effective and designed to ensure that the retailers and victims are treated with respect and dignity. Raising the monetary threshold will have a negative impact and increase victimization. Property crime suspects will become savvy to the new increase and will commit crimes just below the threshold amount to avoid felony prosecution.

The Honorable Gilbert S.C. Keith-Agaran, Chair
and Members
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The Honolulu Police Department respectfully opposes the passage of Part V, Section 37, specifically 708-831, Theft in the Second Degree, under House Bill No. 2561, HD1, Proposed SD1, Relating to the Administration of Justice. We firmly believe the judicial system in place is effective and having a positive effect on preventing recidivism.

Thank you for the opportunity to testify.

Sincerely,



AARON TAKASAKI-YOUNG, Captain
District 1

APPROVED:



LOUIS M. KEALOHA
Chief of Police

POLICE DEPARTMENT
CITY AND COUNTY OF HONOLULU

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March 28, 2016

The Honorable Gilbert S.C. Keith-Agaran, Chair
and Members
Committee on Judiciary and Labor
State Senate
Hawaii State Capitol, Room 016
415 South Beretania Street
Honolulu, Hawaii 96813

Dear Chair Keith-Agaran and Members:

SUBJECT: House Bill No. 2561, HD1, Proposed SD1, Relating to the
Administration of Justice

I am Carl Kalani, Captain of District 2 of the Honolulu Police Department (HPD), City and County of Honolulu.

The HPD supports Part VII, Section 47, specifically §710-, Resisting an order to stop a motor vehicle in the first degree, and §710-1027, Resisting an order to stop a motor vehicle in the second degree.

Annual statistics of documented motor vehicle pursuits by the HPD has shown a rise in the past 10 years from 13 in 2006 to 57 in 2015. Motor vehicle pursuits are inherently dangerous because of the speeds and intricate maneuvers that place the police and the public at risk of serious injury and damage to property.

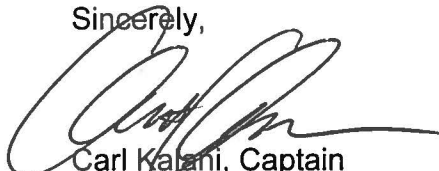
Passage of this bill would create a new class of Resisting an order to stop a motor vehicle that will be a Class C felony. As a Class C felony, this serious offense that needlessly places the public at risk will provide both a deterrent as well as an appropriate punishment for the most serious offenders.

Motor vehicle pursuits are dangerous to all users of the roadways. Passage of this bill will protect law enforcement personnel, the motoring public, as well as all users of the roadways. The HPD strongly supports the passage of this bill.

Honorable Gilbert S.C. Keith-Agaran, Chair
and Members
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Thank you for the opportunity to testify.

Sincerely,



Carl Kalani, Captain
for District 2

APPROVED:



Louis M. Kealoha
Chief of Police

POLICE DEPARTMENT
CITY AND COUNTY OF HONOLULU

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OUR REFERENCE JM-NTK

March 28, 2016

The Honorable Gilbert S. C. Keith-Agaran, Chair
and Members
Committee on Judiciary and Labor
State Senate
Hawaii State Capitol
415 South Beretania Street
Honolulu, Hawaii 96813

Dear Chair Keith-Agaran and Members:

SUBJECT: House Bill No. 2561, H.D. 1, Proposed S.D. 1, Relating to the Administration of Justice

I am John McCarthy, Captain of the Criminal Investigation Division of the Honolulu Police Department, City and County of Honolulu.

The Honolulu Police Department opposes House Bill No. 2561, H.D. 1, Proposed S.D. 1, Part V, Section 42, which relates to the Use of a Computer in the Commission of a Separate Crime. This proposal was submitted by the penal code review committee.

Under this bill, Part V, Section 42, subsection (a) of Section 708-893 of the Hawaii Revised Statutes, would be repealed. More specifically, it would remove the enumerated offenses of Theft in the First and Second Degree from this section of the law.

This subsection received unanimous support when it was passed by the 2006 Legislature. The Legislature has consistently and progressively taken steps since then to strengthen and keep pace with technology as it pertains to its use in criminal activities. These laws recognized the severity and aggravating circumstances when computers are used to commit crime.

The Honorable Gilbert S. C. Keith-Agaran, Chair
and Members
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On page 70, lines 6 and 7 of House Bill No. 2561, H.D. 1, Proposed S.D. 1, the penal code review committee cites its rationale for repealing this subsection as "unduly harsh, given the prevalence of 'smart phones' and other computer devices." The prevalence of any item should not be the deciding fact of whether or not a law should be repealed. We would argue that the exact opposite is true. Because of the prevalence of such devices, we have seen an increase in its use to commit fraud, terroristic threatening, harassment, and sex crimes. These crimes would have not otherwise been committed without the use of such devices.

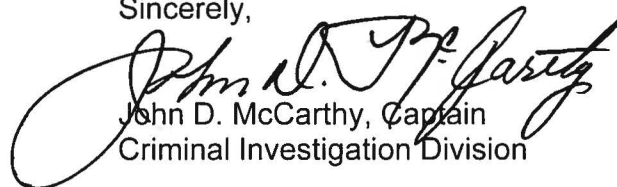
We are in agreement with the Department of the Prosecuting Attorney that these are aggravating circumstances that warrant an increased penalty and should be prosecuted as separate crimes. A comparison can be drawn to the time when the Legislature treated personal information as an aggravating circumstance when the identity theft laws were passed. The Legislature took this aggravating circumstance one step further when it passed legislation making the unauthorized possession of personal confidential information a class C felony.

The use of devices will continue to increase, making it easier for persons to commit thefts. It is not the proliferation of these devices that will make it easier and more frequent but the individual's choice to use these devices to hide behind the anonymity it creates along with the ease of access. In other words, these devices are a tool to commit more and more frequent the offense of theft and make it more difficult to identify and apprehend those offenders.


The Honolulu Police Department urges you to reject the recommendation and strike Part V, Section 42 of House Bill No. 2561, H.D. 1, Proposed S.D. 1, as stated on page 77 in lines 3 through 20 and on page 78 in lines 1 through 11.

Thank you for the opportunity to testify.

Sincerely,


John D. McCarthy, Captain
Criminal Investigation Division

APPROVED:



Louis M. Kealoha
Chief of Police

POLICE DEPARTMENT
CITY AND COUNTY OF HONOLULU

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OUR REFERENCE JK-TA

March 28, 2016

The Honorable Gilbert S. C. Keith-Agaran, Chair
and Members
Committee on Judiciary and Labor
State Senate
Hawaii State Capitol
415 South Beretania Street
Honolulu, Hawaii 96813

Dear Chair Keith-Agaran and Members:

SUBJECT: House Bill No. 2561, H.D. 1, Proposed S.D. 1, Relating to the Administration of Justice

I am Calvin Tong, Major of the Narcotics/Vice Division of the Honolulu Police Department, City and County of Honolulu.

The Honolulu Police Department opposes Part VIII, Section 52, specifically 712-1240.7, and Section 56, specifically 712-1240.8, Methamphetamine Trafficking, in House Bill No. 2561, H.D. 1, Proposed S.D. 1, Relating to the Administration of Justice.

This bill seeks, in part, to amend the methamphetamine trafficking sections in the Hawaii Revised Statutes. It is proposed that methamphetamine trafficking include only the acts of manufacturing it and distributing it to a minor. All other acts would be incorporated into the dangerous drug sections.

Methamphetamine is the most serious drug problem in Hawaii. Of all Schedule I drugs, methamphetamine is number one when it comes to the number of arrests and the amount seized. It is important to have distinct, separate sections to address the possession, distribution, and manufacture of methamphetamine so that the penalties imposed can reflect the seriousness of the offenses.

The Honolulu Police Department urges you to oppose Part VIII, Section 52, specifically 712-1240.7, and Section 56, specifically 712-1240.8, Methamphetamine Trafficking, in House Bill No. 2561, H.D. 1, Proposed S.D. 1, Relating to the Administration of Justice.

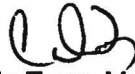
Thank you for the opportunity to testify.

APPROVED:

Sincerely,



Louis M. Kealoha
Chief of Police


Calvin Tong, Major
Narcotics/Vice Division

DAVID Y. IGE
GOVERNOR



STATE OF HAWAII
**CRIME VICTIM COMPENSATION
COMMISSION**

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MARI McCAIG
Chair

MARTHA ROSS
Commissioner

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Commissioner

PAMELA FERGUSON-BREY
Executive Director

TESTIMONY ON HOUSE BILL 2561 HD1 PROPOSED SD1
RELATING TO THE ADMINISTRATION OF JUSTICE

by

Pamela Ferguson-Brey, Executive Director
Crime Victim Compensation Commission

Senate Committee on Judiciary and Labor
Senator Gilbert S.C. Keith-Agaran, Chair
Senator Maile S.L. Shimabukuro, Vice Chair

Monday, March 28, 2016; 9:00 am
State Capitol, Conference Room 016

Good morning Chair Keith-Agaran, Vice Chair Shimabukuro, and members of the Senate Committee on Judiciary and Labor:

Thank you for providing the Crime Victim Compensation Commission (the "Commission") with the opportunity to testify in strong support of House Bill 2561 HD1 SD1 relating to the Administration of Justice.

The Commission was established in 1967 to mitigate the suffering and financial impact experienced by victims of violent crime by providing compensation to pay un-reimbursed crime-related expenses. Many victims of violent crime could not afford to pay their medical bills, receive needed mental health or rehabilitative services, or bury a loved one if compensation were not available from the Commission. In 2003, the Commission undertook the Restitution Recovery Project to disburse restitution payments collected from inmates and parolees to their crime victims or to the Commission in cases where the Commission has previously paid a compensation award to the crime victim.

In 2015, the Commission was selected to serve as a member of the Committee to Review and Recommend Revisions to the Hawai'i Penal Code (Penal Code Committee). The Commission's role as a member of the Penal Code Committee was to represent the crime victim service community. As part of that role, the Commission solicited input from victim service providers and advocates to identify key issues and concerns specific to the penal code. The Penal Code Committee's recommendations became the basis for this bill.

The Commission strongly supports the recommendations of the Penal Code Committee except for the provisions relating to methamphetamine and would like to provide comments on five provisions of the bill that have significant importance to crime victims.

PRIORITY OF PAYMENT OF COURT-ORDERED FEES AND FINES

As a housekeeping matter, sections 14, 25, 26, 27, and 28 places the priority of payment of fees and fines in a new section of chapter 706 and deletes the priority of payments in individual sections of chapter 706. Currently, the priority of payment of court-ordered fees and fines are set forth in multiple sections of the penal code with inconsistent wording. This bill places the priority of payment in a single statute and deletes payment priorities in the various statutes. This will prevent confusion and the need to restate payment priorities when statutes for fees or fines are amended or added.

PARENTS OF MINOR VICTIMS WILL BE ALLOWED ALLOCUTION

Section 17 of this bill amends HRS § 706-604 to ensure that victims will be given the opportunity to speak to the court prior to the defendant being sentenced. The proposed amendment also permits a minor victim's family to speak at sentencing. Minors, as a result of their age, are often unable to fully describe to the court how the crime affected them and to express what sentence they wish for the defendant to receive. Allowing the victim's family to speak in addition to the minor, ensures that the court fully understands the impact of the crime on the minor, the minor's feelings on punishment, and the full extent of restitution.

RESTITUTION WILL BE COLLECTED FROM INMATES IN ACCORDANCE WITH HRS § 353-33.6

Section 61 and section 24 of this bill amends HRS § 353-22.6 and HRS § 706-646, respectively, to clarify that that restitution will be collected from the defendant in accordance with Hawai'i Revised Statutes (HRS) § 353-22.6 and any court-ordered restitution payment schedule is suspended while a defendant is in the custody of the Department of Public Safety (PSD). As part of the Justice Reinvestment Act that went into effect on July 1, 2012, HRS § 353-22.6 was amended to increase the collection by PSD of restitution from inmates from 10% of earnings to 25% of an inmate's wages, deposits and credits to satisfy any outstanding restitution order. The amendment went into effective on July 1, 2012, however, the court restitution orders after July 1, 2012, did not always conform to the new law.

As the clearinghouse for restitution payments collected from inmates and parolees, the Commission receives court judgments containing restitution orders that are inconsistent with HRS § 353-22.6. In a 2013 study of restitution orders for Halawa inmates, the Commission found that 28.9% of the orders were not in compliance with HRS § 353-22.6. The Office of the Attorney General advised PSD that PSD must comply with the court orders instead of complying with the provisions of HRS § 353-22.6. This resulted in significant financial losses to the victims.

The following chart illustrates the real losses to crime victims when courts order restitution to be paid at a rate less than 25% of all earnings, deposits and credits. The chart presents the data for ten restitution orders imposed after July 1, 2012, that have restitution payment orders that are less than the 25% required by HRS § 353-22.6. In approximately two and a half years, the victims of these cases should have received a total of \$5,518.40 instead of the \$172.97 ordered by the courts.

CIRCUIT	SENTENCE DATE	RESTITUTION ORDERED	TOTAL INMATE EARNINGS	TOTAL INMATE CASH DEPOSITS	AMOUNT DEDUCTIBLE FROM INMATE	POTENTIAL DEDUCTIONS AUTHORIZED BY STATUTE	TOTAL LOSS TO CRIME VICTIMS AS OF 1/30/15
1st	4/23/2013	\$ 6,660.00	\$ 579.00	\$ 3,411.00	\$ 57.90	\$ 997.50	\$ 939.60
1st	10/30/2012	\$ 3,925.43	\$ 667.50	\$ 2,950.00	\$ 66.75	\$ 904.38	\$ 837.63
1st	3/12/2013	\$ 309.19	\$ 143.00	\$ 3,250.00	\$ 14.30	\$ 309.19	\$ 294.89
1st	1/28/2013	\$ 1,845.00	\$ 9.00	\$ 1,975.00	\$ 0.90	\$ 496.00	\$ 495.10
1st	7/17/2012	\$ 150,542.45	\$ 80.32	\$ 939.87	\$ 8.03	\$ 255.05	\$ 247.02
1st	8/6/2013	\$ 36,450.25	\$ 0.00	\$ 925.00	\$ 0.00	\$ 231.25	\$ 231.25
2nd	**8/2/2013	\$ 2,925.22	\$ 30.10	\$ 1,660.00	\$ 9.03	\$ 422.53	\$ 413.50
3rd	**11/2/2012	\$ 1,084.00	\$ 0.00	\$ 1,850.00	\$ 0.00	\$ 462.50	\$ 462.50
3rd	11/29/2012	\$ 440.00	\$ 160.56	\$ 2,915.00	\$ 16.06	\$ 440.00	\$ 423.94
5th	7/31/2013	\$ 14,874.28	\$ 0.00	\$ 4,000.00	\$ 0.00	\$ 1,000.00	\$ 1,000.00
Totals:					\$ 172.97	\$ 5,518.39	
Total Loss to Crime Victims as of January 30, 2015:							\$ 5,345.42

In the two cases indicated with ** next to the sentencing date, the restitution orders were corrected nunc pro tunc to the sentencing date. In theory, the loss to the crime victims should have been zero, however, PSD was unable to retroactively collect the restitution. Therefore, the losses reflected on the chart for those two cases are from the date of sentencing to the date the court filed the corrected restitution order. These two cases further illustrate the need for PSD to be able to follow HRS § 353.22.6 without regard to inconsistent court orders or having to wait for court orders to be corrected.

Through the collaborative efforts of the Judiciary, PSD, and the Commission, the number of restitution orders that are inconsistent with HRS § 353-22.6 have significantly decreased. However, the loss to crime victims if restitution is not collected at the statutory rate is significant and cannot wait for a court to correct the order. This bill will eliminate the need to correct restitution orders through the courts and the resulting delay in deducting the appropriate restitution payment from inmate accounts.

REMOVAL OF THE SUNSET PROVISION FOR HRS §353-22.6 ALLOWS VICTIMS TO CONTINUE TO RECEIVE MEANINGFUL RESTITUTION FROM INMATES

Section 69 amends Act 139, Session Laws of Hawaii 2012, as amended by Act 67, Session Laws of Hawaii 2013, to remove HRS § 353-22.6 from the list of statutes that will revert to their June 30, 2012 form on July 1, 2018. The amendment makes the 25% provision of HRS § 353-22.6 permanent which assures that victims will continue to receive meaningful restitution in the form of 25% of the inmates' earnings, deposits, and credits.

MARITAL STATUS OF VICTIMS OF SEXUAL ASSAULT IN THE THIRD DEGREE ELIMINATED AS AN ELEMENT THAT THE STATE MUST PROVE

Currently, to secure a conviction for Sexual Assault in the Third Degree involving sexual contact, the prosecutor must prove that the victim and the offender were not married. In many cases, this requirement requires a prosecutor to ask a minor child who may be as young as five whether he or she was married to the perpetrator. In addition, the requirement that the victim and perpetrator not be married fails to provide a spouse with the same protections that exist for an unmarried person. A person would be the victim of a Sexual Assault in the Third Degree if that person is forced to have sexual contact with the person's fiancé or fiancée an hour prior to their wedding. However, if the same act occurred immediately after the wedding, no crime would have occurred. Marriage should not create a license for a spouse to engage in unwanted sexual contact.

The proposed amendment in section 32 eliminates the unwarranted requirement of the parties being unmarried from the definition of Sexual Contact which would eliminate it as an element that must be proven for a conviction of Sexual Assault in the Third Degree.

Thank you for providing the Commission with the opportunity to testify in strong support of House Bill 2561 HD1 Proposed SD1.



**Testimony to the Senate Committee on Judiciary & Labor
Monday, March 28, 2016 at 9:00 A.M.
Conference Room 016, State Capitol**

RE: HOUSE BILL 2561 HD1 RELATING TO THE ADMINISTRATION OF JUSTICE

Chair Keith-Agaran, Vice Chair Shimabukuro, and Members of the Committee:

The Chamber of Commerce of Hawaii ("The Chamber") **opposes** HB 2561 HD1, which enacts recommendations of the penal code review committee convened pursuant to HCR155, SD1 (2015).

The Chamber is Hawaii's leading statewide business advocacy organization, representing about 1,000 businesses. Approximately 80% of our members are small businesses with less than 20 employees. As the "Voice of Business" in Hawaii, the organization works on behalf of members and the entire business community to improve the state's economic climate and to foster positive action on issues of common concern.

The Chamber believes that HB 2561 HD 1, while on the surface reviews the penal code, amends the theft threshold and could lead to an increase in theft as it allows thieves to steal more without serious consequences. On page 69, the bill reads:

"Increasing the dollar amount that makes an offense a felony for the offenses of theft in the second degree, theft in the third degree, shoplifting, and theft of utility services, to partially reflect the effect of inflation since the felony theft threshold was last raised..."

Loss Prevention professionals have reported that there are chronic shoplifters who calculate the value of merchandise to steal in order to keep it under the \$300 limit and avoid prosecution and serious penalties. For retailers that have to deal with these chronic shoplifters, increasing the monetary threshold would only harm those businesses as they cannot be compensated and cannot penalize the thieves, who will return and continue stealing.

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 to theft is more than \$240 million lost by Hawaii businesses in 2010 alone.

Thank you for the opportunity to testify.

COMMUNITY ALLIANCE ON PRISONS

P.O. Box 37158, Honolulu, HI 96837-0158

Phone/email: (808) 927-1214 / kat.caphi@gmail.com



COMMITTEE ON JUDICIARY AND LABOR

Sen. Gil Keith-Agaran, Chair

Sen. Maile Shimabukuro, Vice Chair

Monday, March 28, 2016

9:00 a.m.

Room 016

SUPPORT for HB 2561 HD1 - The Administration of Justice

Aloha Chair Keith-Agaran, 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 in Hawai'i for almost two decades. This testimony is respectfully offered on behalf of the 6,000 Hawai'i individuals living behind bars or under the "care and custody" of the Department of Public Safety. We are always mindful that approximately 1,400 of Hawai'i's imprisoned people 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, far from their ancestral lands.

HB 2561 HD1 enacts the recommendations of the penal code review committee convened pursuant to HCR155, SD1 (2015) and change the effective date to 3/15/2038.

Community Alliance on Prisons served as a member of the Penal Code Review Committee. Kudos to Chief Justice Recktenwald for appointing Judge Alm to spearhead this massive effort and to Judge Alm for his diligence, to Judge Ginoza for an amazing job keeping track of votes and discussion and writing the report, and to the terrific Judiciary staff who kept us all informed. Of this 29-member committee, almost half of the members were either former or current prosecutors or work for a prosecutor's office.

The first paragraph in the Executive Summary of the Report of the Committee to Review and Recommend Revisions to the Hawai'i Penal Code reads:

"The criminal justice community is looking to be tough on crime when appropriate but also to be smart on crime. The committee drew on the collective experience of its diverse membership and, at the same time, attempted to see what current criminal justice research could teach us. The committee recognized the importance of innovative programs that were being implemented in Hawai'i, but also looked at other states to stay abreast of current thinking and practices in coming up with recommendations."

Community Alliance on Prisons was heartened by this statement because it acknowledges that across the nation, jurisdictions are realizing that mass incarceration is not the answer.

We find the objections raised by some of the members to this bill interesting. Everyone had input. All points of view were considered, and after discussion a vote was taken. No one on the committee got everything they wanted; however, this was a good start that brought the current research on criminal justice issues into the discussions.

The objections being raised by some are about 2 issues: 1) raising the felony theft threshold for \$300 to \$750, and 2) moving crystal methamphetamine into the regular drug statutes.

Raising the Felony Theft Threshold

A February 23, 2016 report from Pew’s Public Safety Performance Project¹ reports that, “Since 2001, at least 30 states have raised their felony theft thresholds, or the value of stolen money or goods above which prosecutors may charge theft offenses as felonies, rather than misdemeanors.

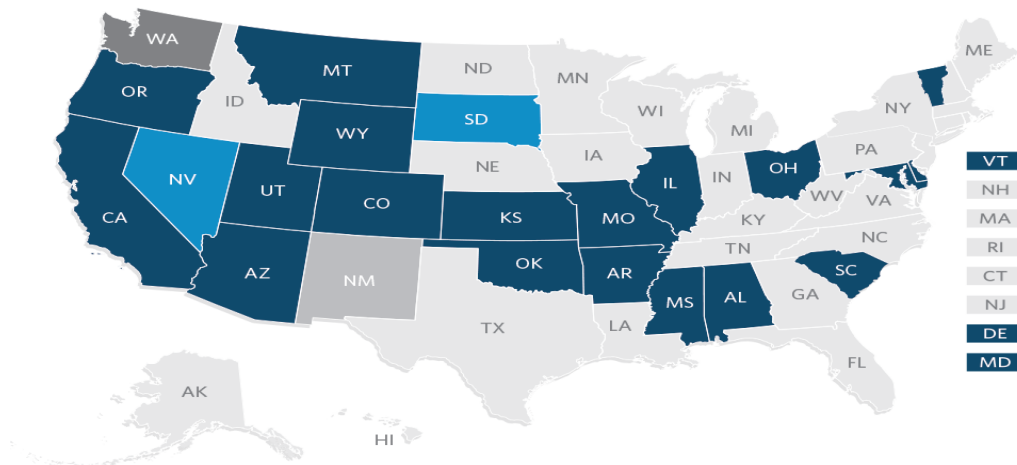
(...)

Critics have warned that these higher cutoff points might embolden offenders and cause property crime, particularly larceny, to rise. To determine whether their concerns have proved to be true, The Pew Charitable Trusts examined crime trends in the 23 states that raised their felony theft thresholds between 2001 and 2011, a period that allows analysis of each jurisdiction from three years before to three years after the policy change. Pew also compared trends in states that raised their thresholds during this period with those that did not.”

Map 1

Property Crime and Larceny Rates Fell in 19 of 23 States That Raised Their Felony Thresholds Between 2001 and 2011

Four states had increases in one or both rates



Source: Federal Bureau of Investigation, *Crime in the United States* series, 1998-2014
 © 2016 The Pew Charitable Trusts

¹ **The Effects of Changing State Theft Penalties** - Increased felony thresholds have not resulted in higher property crime or larceny rates, Pew Public Safety Performance Project, February 23, 2016.

<http://www.pewtrusts.org/en/research-and-analysis/issue-briefs/2016/02/the-effects-of-changing-state-theft-penalties>

Figure 3

Increases in Felony Theft Thresholds Had No Effect on Property Crime, Larceny Rates

Crime decline continued in states that raised monetary limits between 2001 and 2011



Notes: Pew used a panel fixed-effects approach to determine whether increases in state felony theft thresholds had an effect on property crime and larceny rates. The analysis found no statistically significant relationship using the standard threshold of 0.05. See the methodological notes for more information about this analysis.

Source: Pew's analysis of data from the Federal Bureau of Investigation, *Crime in the United States* series, 1998-2014.

Because property crime and larceny rates have been on a downward trajectory nationwide, it is important to evaluate whether the same trend can be observed in states that have raised their felony theft thresholds. Average property crime and larceny rates continued to fall in the states that raised their thresholds between 2001 and 2011.

This chartbook illustrates three important conclusions from the analysis:

- Raising the felony theft threshold has no impact on overall property crime or larceny rates.
- States that increased their thresholds reported roughly the same average decrease in crime as the 27 states that did not change their theft laws.
- The amount of a state's felony theft threshold – whether it is \$500, \$1,000, \$2,000, or more – is not correlated with its property crime and larceny rates

In Hawai'i, the felony theft threshold has remained at \$300 for 30 years. In 1986 the minimum wage was \$3.35 an hour!

A review of the U.S. Department of Labor Inflation Calculator shows that \$300 in 1986 is equivalent to \$649.03 in 2016 dollars and when the 30% "paradise tax" is added (\$194.71), the actual equivalent of \$300 in 1986 is \$843.74 in 2016!

A review of The People's History website² reports the cost of living in 1986...

- Average Income per year \$22,400.00
- Average Monthly Rent \$385.00
- Average Price for new car \$9,255.00
- 1 gallon of gas 89 cents

² *The Year 1986 from The People's History* http://www.thepeoplehistory.com/1986.html#cost_of_living

- Ford Mustang \$7,452

Spending \$50,000 a year to incarcerate an individual for a \$300 property crime makes no logical sense 2016.

The second issue that has been raised is moving crystal meth into the regular drug statute. **Judicial discretion and independence is crucial to a democracy.** Only the court knows the circumstances of a crime, the actors in that incident, and the record of the defendant appearing before the court. Mandatory minimum sentencing has been a topic of discussion around the nation as more and more jurisdictions are dealing with overcrowded facilities and budget challenges.

The latest poll on mandatory minimums that we found was one by Families Against Mandatory Minimums (FAMM) from October 2015³. In addition to finding that support for mandatory minimum repeal has increased from **59 percent** in 2008, the last time FAMM conducted the poll, to **77 percent today**, we also learned the following:

- By a three-to-one margin (**42 percent to 13 percent**), Americans would be more likely to re-elect their congressman if they knew they supported eliminating mandatory minimum prison sentences so judges can make decisions on a case-by-case basis; and
- **79 percent** of Americans agree that the federal government is spending too much money on locking up nonviolent offenders and should shift that funding to other pressing public safety priorities like local law enforcement, victims' services, and stricter probation and parole.

"In 25 years, I have never seen such deep and wide support for eliminating mandatory minimum sentences," said Julie Stewart, President of FAMM. **"Our poll found that 71 percent of Republicans, including 65 percent who identify themselves as 'very conservative,' want to repeal one-size-fits-all sentences."**

We urge the committee to pass this measure that was vetted by many great legal minds. We are not happy with everything, however, Community Alliance on Prisons appreciates being part of the committee and for the start of a more productive dialogue.

Mahalo for this opportunity to testify.

³ **Key Findings from a National Survey Conducted October 7-11, 2015**, Families Against Mandatory Minimums National Survey. <http://www.scribd.com/doc/285185789/Nati.onal-Survey-Overwhelming-Majority-of-Americans-Want-Mandatory-Minimum-Reform>



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TO: COMMITTEE ON JUDICIARY & LABOR
Senator Gilbert S.C. Keith-Agaran, Chair
Senator Maile S.L. Shimabukuro, Vice Chair

FROM: HAWAII FOOD INDUSTRY ASSOCIATION
Lauren Zirbel, Executive Director

DATE: Monday, March 28, 2016
TIME: 9:00 a.m.
PLACE: Conference Room 016

RE: HB2561, HD1

Position: Oppose

The Hawaii Food Industry Association is comprised of two hundred member companies representing retailers, suppliers, producers, and distributors of food and beverage related products in the State of Hawaii.

HFIA strongly opposes increasing the threshold valuation of property and services from \$300 to \$750 for theft in the second degree.

Food retailers, small and large, operate at a profit margin of about one percent. Losses due to theft are an enormous burden to businesses both large and small. The only way to offset such losses is to increase prices. Shoplifting is not a victimless crime against “big corporations,” rather it is a crime against real people and real businesses in our communities and it negatively affects all of us.

This bill’s proposed threshold increase will encourage theft. The National Retail Federation estimates that the value of merchandise lost to theft represent over one percent of annual sales. If that same percentage is applied to retail sales in Hawaii (\$24.3 billion in 2010), local businesses lost more than \$240 million in 2010 because of theft.

Increasing the threshold value by 150 percent will essentially allow thieves to steal over 150 percent more without fear of additional consequences. Our loss prevention professionals report that there are chronic shoplifters, some with dozens of arrests or more, who know the system thoroughly. To avoid prosecution and serious penalties, they calculate the value of merchandise

to ensure it is just slightly below the current \$300 threshold.

In these cases the retailer is never compensated for losses. For a small business, these types of economic damage can be devastating especially when it occurs repeatedly.

In addition, this measure is not limited to businesses; it also applies to individuals. The loss of \$300 worth of personal property due to theft is a tremendous and traumatic experience because it represents the loss of many hours worked. Increasing the threshold to \$750 leaves individuals open to the possibility of even greater economic damage while minimizing penalties for thieves.

Increasing the threshold is bad for businesses, bad for customers, bad for individuals, and bad for Hawaii, and thieves are the only entities who would benefit.

Please hold this bill.

Thank you for the opportunity to testify.



THE SEX ABUSE TREATMENT CENTER

A Program of Kapi'olani Medical Center for Women & Children

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Joshua A. Wisch

DATE: March 28, 2016

TO: The Honorable Gilbert Keith-Agaran, Chair
The Honorable Maile Shimabukuro, Vice Chair
Senate Committee on Judiciary and Labor

FROM: The Sex Abuse Treatment Center
A Program of Kapi'olani Medical Center for Women and Children

RE: Testimony in Support of Part IV of H.B. 2561, H.D. 1, Proposed S.D. 1
Relating to the Administration of Justice

Good morning Chair Keith-Agaran, Vice Chair Shimabukuro, and members of the Senate Committee on Judiciary and Labor.

The Sex Abuse Treatment Center (SATC) supports Part IV of H.B. 2561, H.D. 1, Proposed S.D. 1. H.B. 2561 enacts recommendations of the penal code review committee convened pursuant to H.C.R. 155, S.D. 1 (2015).

Please note that the SATC's following comments are limited to Part IV of H.B. 2561 H.D. 1, Proposed S.D. 1. This Part amends the definition of "sexual contact" in the context of Chapter 707 of the Hawai'i Revised Statutes (HRS) to eliminate a blanket exemption from the offenses of sexual assault for married people who subject their spouses to unconsented-to touching of intimate body parts. The amendments in Part IV would, however, maintain the exemption for married persons with respect to the crime of Sexual Assault in the 4th Degree.

The current law specifies that to be "sexual contact", the actor – the person initiating the touching of sexual or other intimate body parts – cannot be married to the other person who the actor is touching or is causing to touch the actor. This means that touching of intimate body parts between married spouses is not considered "sexual contact" for the purpose of defining crimes.

This has the perverse result of excusing married spouses from being accountable for various behaviors that would constitute sexual assault, and fails to protect victims of intimate partner sexual violence in the context of a marriage to their attacker in a manner that is grossly disproportionate to the protections afforded to their unmarried peers.

For example, a married person who knowingly subjects their spouse who is mentally defective, mentally incapacitated, or physically helpless to acts that would otherwise be considered sexual contact, would be excused from having committed Sexual

Assault in the 3rd Degree (HRS Sec. 707-732(d)). Likewise, a married person who knowingly and by strong compulsion, such as the use of physical battery, a dangerous instrument, or threat of bodily injury, forces their spouse to be subject to acts that would otherwise be considered sexual contact, would be excused from having committed Sexual Assault in the 3rd Degree (HRS Sec. 707-732(f)).

Exceptions to criminal statutes that allow married persons to force their spouses to have unwanted sexual contact without reprisal are based on the false and outdated legal notion that a marriage contract represents unconditional sexual consent by, and submission of, one spouse (historically, the wife) to the other. However, all fifty states have recognized, in banning penetrative rape in the context of marriage since the 1970s, that unwanted sexual activity in marriage can be a form of spousal abuse and domestic violence, and it is not an obligatory feature of the marriage experience that people, by default, consent to when they get married. There are many times in the course of any marriage where sexual contact may be unwanted and a violent, traumatizing affront to a non-consenting spouse.

An unlimited exception for married persons to have access to non-penetrative sexual contact with their spouses deeply disadvantages would-be victims who are married to their attackers relative to their unmarried peers, a deeply concerning equal protection issue. Although married persons are not a class to which harmful differences in protections provided by the law are automatically considered suspect, there is no rational basis for this drastically disparate treatment.

If the State of Hawai'i rejects a justification that marriage equals unconditional sexual access and consent, it makes no sense that a person on the day before their wedding may report their intimate partner to the police to seek protection against forcible sexual contact, but on the day after the wedding that same person would have no such recourse unless such sexual contact escalated to sexually penetrative rape.

The amendment to the Penal Code proposed in Part IV of H.B. 2561, H.D. 1, Proposed S.D. 1 would correct this imbalance in the current law with respect to the offense of Sexual Assault in the 3rd Degree by removing the language "not married to the actor" from the definition of "sexual contact," when describing a would-be victim of unwanted, unconsented to, and compulsory sexual contact.

Therefore, we respectfully urge you to join SATC in supporting the passage of this portion of H.B. 2561, H.D. 1, Proposed S.D. 1.



766 Pohukaina St
Honolulu, HI 96813
Direct: 597-3329

TO: COMMITTEE ON JUDICIARY AND LABOR
Senator Gilbert S.C. Keith-Agaran, Chair
Senator Maile S.L. Shimabukuro, Vice Chair

FROM: Newell Hirata, Loss Prevention Manager

DATE: Monday- March 28, 2016
TIME: 9:00 am
Conference Room 016

RE: HB2561, HD1

Position: Oppose

ABC Stores strongly opposes increasing the threshold valuation of property and services for degrees of theft as outlined in HRS Sections 708-832 and 708-833.

In 2015, our stores prevented over 250 shoplifting attempts. Realistically, the thefts that were not prevented are easily in excess of 500-600. As many Loss Prevention Professionals have probably stated, shoplifters are well aware of the limits that define a theft as a misdemeanor or a felony. An increase in these limits will allow a shoplifter to increase their thefts without the fear of a more severe prosecution.

Many retailers are already struggling with repeat offenders, some of our shoplifters have over 85 charges on their record. Are we trying to make it easier for them to stay out of jail? If anything, a bill treating all shoplifting convictions in the aggregate is what should be in the works.

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.

Raising the definition of degrees of theft will allow shoplifters to increase their theft activity to the level of their choosing. This will force businesses to focus more of their attention toward theft prevention and away from servicing customers. Retailers will be forced to increase their prices in an effort to make up for the losses they have incurred due to a rise in shoplifting. Ultimately, this will hurt Hawaii's reputation as an affordable vacation destination. Since we are already battling this perception, raising the threshold will do more harm than good.

I understand we have a prison overcrowding problem. However, if we are trying to reduce operating costs at our prisons by lowering the inmate count, this will not work. The unintended consequence will be retailers raising prices, achieving less sales, less tourism as Hawaii will be considered an expensive destination, job cuts to keep businesses alive, employees filing unemployment claims, less GIT paid due to less sales, less hotel and room taxes due to lower visitor count.

In other words, it is not that simple. The effect of passing this bill could be devastating to our economy.

Aloha and Mahalo,

Newell Hirata
Loss Prevention Manager

Head

CHINATOWN MERCHANTS ASSOCIATION

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975 Kapiolani Blvd., 2nd Floor
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Bus 808 593-9776

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Chinatown Merchants
Hawaii Dragon Boat Festival & Races
Chinatown Light Market

Night In Chinatown Festival & Parade
Aloha Chinese Concepts
D.B. Productions, Inc.

March 24, 2016

Sent via fax: 586-7348
Sent via email: senkeithagaran@capitol.hawaii.gov
Sent via email: JDLtestimony@capitol.hawaii.gov
Sent via email: reprhoads@capitol.hawaii.gov

Senator Gilber S.C. Keith-Agaran
Hawaii State Capital, Room 221
415 S. Beretania St.
Honolulu, Hawaii 96813

Re: H.B. 2561, H.D. 1
Section 37-41 (pages 72-77)

Dear Senator Keith-Agaran:

Thank you for considering the above referenced bill. The Chinatown Merchants Association appreciates all of your efforts in Representative Rhoads introducing this measure, but for a merchant and local retailer, raising the dollar-amount thresholds for multiple levels of theft would impact their business negatively and greatly. Raising the thresholds will encourage crime in the Chinatown District and Representative Rhoads District 29. Habitual property crime will increase in activity versus decrease in activity.

If it is your intention to decrease criminal activity, then lowering the dollar-amount thresholds would be the route to pursue with a stiffer punishment and penalty.

We submit written testimony to you that The Chinatown Merchants Association urges you to disapprove of the amendments because the amendment would lead to greater harm when protecting the public and combating rampant property crime and theft in our area.

If there should be any questions or concerns about this matter, please feel free to call me anytime, including evenings, weekend and holidays.

=====
Night In Chinatown Web Site: www.nightinchinatown.com
Hawaii Dragon Boat Festival Web Site: www.dragonboathawaii.com
General email address <hawaiiichinatown@yahoo.com>

Very truly yours,

CHINATOWN MERCHANTS ASSOCIATION


GIFFORD CHANG

Email giffordchang@yahoo.com
Cellular: 808 306-4570

=====
Night In Chinatown
Hawaii Dragon Boat Festival
General email address

Web Site: www.nightinchinatown.com
Web Site: www.dragonboathawaii.com
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Michael Tam, *Martin & MacArthur*
Cheryl Gallagher, *Honolulu Cookie Company*
Brian Tatsumura, *Nordstrom*
Mike Wiley, *Nella Media Group*

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Cheryl Gallagher, *Honolulu Cookie Company*
Mike Wiley, *Nella Media Group*

Senator Gilbert Keith-Agaran, Chair
Senator Maile Shimabukuro, Vice Chair
Senate Committee on Judiciary and Labor

Monday, March 28, 2016
Conference room 016; 9:00 AM

RE: HB 2561 HD1 PROPOSED SD1 – RELATING TO THE ADMINISTRATION OF JUSTICE

Aloha Chair Keith-Agaran, Vice Chair Shimabukuro and Members of the Committee:

Retail Merchants of Hawaii (RMH) is a not-for-profit trade organization representing over 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.

Our testimony is specific to Part V, Section 37, subsection (1) of HB 2561 HD1 Proposed SD1. RMH strongly opposes increasing the threshold property and services valuation for theft in the second degree from \$300 to \$750, and from \$100 to \$250 for theft in the third 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 (\$30 billion in FY 2015), the loss is more than **\$300 million in sales revenue, and a potential \$12 million in GET.**

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 mom & pop business, a loss of almost 1% of sales has a devastating impact.

More importantly, this section of the HRS is not limited to retail theft; it applies to farmers, ranchers and individuals as well. 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 the Retail Merchants of Hawaii respectfully urge you to amend HB 2561 HD1 Proposed SD1 **to delete the proposed increase and keep the value at \$300 and \$100.** Thank you for your consideration and for the opportunity to comment on this measure.

Michael Tam
Chair of the Board

From: mailinglist@capitol.hawaii.gov
Sent: Tuesday, March 22, 2016 7:03 PM
To: JDLTestimony
Cc:
Subject: Submitted testimony for HB2561 on Mar 28, 2016 09:00AM

HB2561

Submitted on: 3/22/2016

Testimony for JDL on Mar 28, 2016 09:00AM in Conference Room 016

Submitted By	Organization	Testifier Position	Present at Hearing
Karin Nomura	Individual	Support	No

Comments: While this bill seems to be about the convicted parties, already run through the penal system, rather than the culpability of the so far “fun and entertaining” not yet brought to justice, yet still out there enjoying the fact that they have gotten away with recidivism – with all those entertaining shouts of how justice and punishment have yet to be accomplished – and endearing shouts of “prove it” and “proof is in the pudding” type midnight events, with cross references to join their agency/organization/etc. as then you “can get away with doing stuff like this” – believe that the “Hawaii penal code” is there to “help ensure that grades of offenses and punishment are fair and proportionate to the crime committed, with particular attention paid to provisions that base culpability on dollar amounts.” (Even the fun, job questionnaires/exams that inquire as to how many uniformed parties are necessary to change the light bulbs of people in office – actual question found on an exam, in multiple formats, for a position with the state, that had nothing to do with janitorial or maintenance type services, and def. nothing to do with the position I was applying for...but, that was several years ago...Recent years much more blatant and not as amusing to me. Seems the term malfeasance has been the more prevalent.) So, in future hope that when brought to justice, that the punishment and the compensation are proportionate to prevent any further acts of misfeasance/nonfeasance/malfeasance, and that items such as my road/search for justice, never occurs to anyone again – maybe something along the lines of Scandinavia, where the fines are based on the income, as it seems to work.

Please note that testimony submitted less than 24 hours prior to the hearing, improperly identified, or directed to the incorrect office, may not be posted online or distributed to the committee prior to the convening of the public hearing.

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From: mailinglist@capitol.hawaii.gov
Sent: Wednesday, March 23, 2016 9:36 AM
To: JDLTestimony
Cc:
Subject: Submitted testimony for HB2561 on Mar 28, 2016 09:00AM

HB2561

Submitted on: 3/23/2016

Testimony for JDL on Mar 28, 2016 09:00AM in Conference Room 016

Submitted By	Organization	Testifier Position	Present at Hearing
Victor K. Ramos	Individual	Oppose	No

Comments: Concur with objections raised by Honolulu Police Dept.

Please note that testimony submitted less than 24 hours prior to the hearing, improperly identified, or directed to the incorrect office, may not be posted online or distributed to the committee prior to the convening of the public hearing.

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