

HB-1777

Submitted on: 1/23/2018 6:05:32 PM

Testimony for JUD on 1/25/2018 2:00:00 PM

Submitted By	Organization	Testifier Position	Present at Hearing
Richard K. Minatoya	Maui Department of the Prosecuting Attorney	Support	Yes

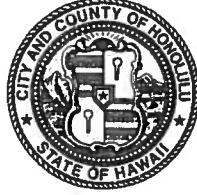
Comments:

The Department of the Prosecuting Attorney, County of Maui, STONGLY SUPPORTS HB 1777, Relating to Lesser Included Offenses. This measure will clarify that lesser included offenses are included in charges filed by criminal complaint. The lesser included offenses are already specifically included in charges filed by information and indictment.

The Department of the Prosecuting Attorney, County of Maui, requests that this measure be PASSED.

POLICE DEPARTMENT
CITY AND COUNTY OF HONOLULU

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OUR REFERENCE MK-KK

January 25, 2018

The Honorable Scott Y. Nishimoto, Chair
and Members
Committee on Judiciary
House of Representatives
Hawaii State Capitol
415 South Beretania Street, Room 325
Honolulu, Hawaii 96813

Dear Chair Nishimoto and Members:

SUBJECT: House Bill No. 1777, Relating to Lesser Included Offenses

I am Mikel Kunishima, Captain of the Criminal Investigation Division of the Honolulu Police Department (HPD), City and County of Honolulu.

The HPD supports House Bill No. 1777, Relating to Lesser Included Offenses.

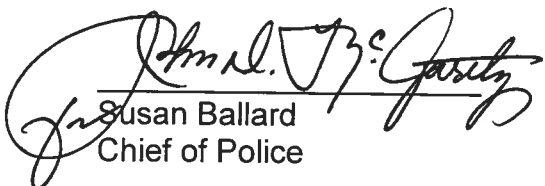
This bill appropriately amends Subsection (4) of Section 701-109, Hawaii Revised Statutes, to clarify the definition of an included offense to expressly include offenses charged via a felony complaint. The HPD believes that the amendment clarifies the definition of an included offense to clearly include offenses charged via felony complaint.


The HPD urges you to support House Bill No. 1777, Relating to Lesser Included Offenses.

Thank you for the opportunity to testify.

APPROVED:

Sincerely,


Susan Ballard
Chief of Police


Mikel Kunishima, Captain
Criminal Investigation Division

DEPARTMENT OF THE PROSECUTING ATTORNEY
CITY AND COUNTY OF HONOLULU

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KEITH M. KANESHIRO
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CHASID M. SAPOLU
FIRST DEPUTY PROSECUTING ATTORNEY



THE HONORABLE SCOTT NISHIMOTO, CHAIR
HOUSE COMMITTEE ON JUDICIARY
Twenty-Ninth State Legislature
Regular Session of 2018
State of Hawai`i

January 25, 2018

RE: H.B. 1777; RELATING TO LESSER INCLUDED OFFENSES.

Chair Nishimoto, Vice Chair San Buenaventura, and members of the House Committee on Judiciary, the Department of the Prosecuting Attorney of the City and County of Honolulu (Department) submits the following testimony in strong support of H.B. 1777. This bill is part of the Department's 2018 legislative package.

The purpose of this bill is to amend parts of §701-109 of the Hawaii Revised Statutes to clarify that a defendant may be convicted of a lesser included offense in cases filed through felony complaint, indictment or information, in circuit or district court.

According to Black's Law Dictionary, "lesser included offenses" are crimes in which a lesser offense contains all the elements of a greater offense with the caveat that the greater offense contains one or more additional elements to be proven beyond a reasonable doubt. This issue commonly arises when a defendant proceeds to either a jury or a bench trial. In such cases, a judge is to ensure that the jury is aware of such lesser included offenses, and that based on the evidence presented in the trial, the jury is allowed to consider the guilt and innocence of the defendant for not only the initial charge, but also any lesser included offenses, if a jury cannot unanimously agree on the outcome of the initial charge.

As a matter of law, all felony cases can be initiated for prosecution via felony complaint or indictment (Grand Jury proceedings), and in specific types of felony charges, cases can be initiated via information. Each case presents different challenges, and there are times when—strategically—initiating the case via felony information is preferred because a preliminary hearing follows the filing of the complaint. At a preliminary hearing, the defendant is afforded the right to confront a witness against him or her, and the defendant's attorney is allowed an

opportunity to cross-examine the witnesses. Additionally, the State is given an opportunity to have sworn testimony from witnesses that may, in certain circumstances, be used at trial if a witness suddenly becomes unavailable prior to trial. Because the Department does initiate some felony cases via felony complaint, it is important constitutionally that the courts and juries are authorized to consider lesser included offenses in those cases as well, when determining a defendant's guilt or innocence.

For the foregoing reasons, the Department of the Prosecuting Attorney of the City and County of Honolulu strongly supports the passage of H.B. 1777. Thank you for the opportunity to testify on this matter.

Justin F. Kollar
Prosecuting Attorney



Rebecca Vogt Like
Second Deputy

Jennifer S. Winn
First Deputy

Diana Gausepohl-White
Victim/Witness Program Director

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THE HONORABLE SCOTT Y. NISHIMOTO, CHAIR
HOUSE COMMITTEE ON JUDICIARY
Twenty-Ninth State Legislature
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January 25, 2018

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