

HB-2074

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| Submitted By | Organization | Testifier Position | Present at Hearing |
|---------------------|---------------------|---------------------------|---------------------------|
| Joy Marshall | | Support | No |

Comments:



**Office of the Public Defender
State of Hawaii**



**Testimony of the Office of the Public Defender, State of Hawaii
to the House Committee on Judiciary**

January 31, 2018

H.B. No. 2074: RELATING TO OFFENSES AGAINST PROPERTY RIGHTS

Chair Scott Y. Nishimoto and Members of the Committee:

The Office of the Public Defender strongly opposes H.B. No. 2074. This measure would automatically elevate the severity of any property offense committed against a nonprofit. In effect, all property offenses under HRS Chapter 708, no matter the circumstances, will have higher penalties and create a special class of offenses for nonprofit organizations.

We are concerned about the lack of discretion given to the Courts and the creation of mandatory sentencing that fails to take into account any individual, special, or mitigating circumstances. Of particular concern is the automatic elevation of misdemeanor offenses to felony offenses and the automatic elevation of Class A felony offenses to a life sentence – on par with crimes of violence like Murder in the Second Degree.

While we understand the desire to carve out special protections for certain individuals or organizations who may be victims of property crimes, we believe this measure goes too far by creating this special sentencing category. This bill would open the floodgates for more special sentencing provisions for other classes of people or organizations that are unnecessary. Nonprofit organizations, like any other business entities, have been victimized by property crimes, however, just like any other business entity, they have the ability to monitor and audit their finances, to seek insurance for losses, and to protect their property. If this bill is intended to focus on financial crimes relating to embezzlement or theft – there are provisions in the Hawaii Revised Statutes to address those crimes. If this bill is intended to focus on property crimes in the form of criminal property damage – there are provisions in the Hawaii Revised Statutes to address those crimes. A blanket automatic elevation without review of individualized and particular circumstances is a draconian method for addressing the need to help and protect nonprofit organizations – if there in fact is a specific need that isn't already covered by the penal code.

Enhanced penalties for property crimes committed upon nonprofit organizations will not have a concomitant effect on the integrity of their organization. The assumption that enhanced penalties will deter individuals from harming or committing a property crime on a certain class of business or organization is false.

We would also note that Chapter 708 is very broad – it covers everything from burglary, robbery, theft, criminal property damage, graffiti, bribery, embezzlement, deceptive business practices, unauthorized computer access, trademark counterfeiting, cable television fraud, arson, and unlicensed contracting. We are concerned with the lack of particularization or specification as to the need for this overbroad blanket sentencing structure for the special category of nonprofit organizations.

We strongly oppose H.B. 2074 and thank you for the opportunity to present testimony to this committee.