

STATE OF HAWAI‘I  
OFFICE OF THE PUBLIC DEFENDER

**LATE**

**Testimony of the Office of the Public Defender,  
State of Hawai‘i to the House Committee on Judiciary**

February 12, 2020

H.B. No. 1725: RELATING TO PUBLIC ORDER

Chair Lee, Vice Chair San Buenaventura, and Members of the Committee:

The Office of the Public Defender respectfully opposes H.B. No. 1725.

This bill proposes to treat causing a delay, malfunction or breakdown of the operation of an automated public transit vehicle as equal to causing bodily injury to the operator or threatening to cause bodily injury to the operator of said vehicle.

To begin with, we have serious concerns that the term “delay” is simply too vague and ambiguous as used in the following passage:

- (c) Intentionally, knowingly, or recklessly causing the delay, malfunction, or breakdown of operation of an automated public transit vehicle, system, or service.

The term “delay” is unconstitutionally vague because the term lacks precision; it does not provide any standard for a citizen to determine what conduct is forbidden. Moreover, the term “delay” is subject to *ad hoc*, inconsistent, and arbitrary enforcement by law enforcement, prosecutors, juries, and the courts. Therefore, as written, the law will result in many unintended consequences and arrests.

A passenger who simply holds open the door or prevents the door closing so that other individuals may enter or exit the HART rail car will essentially be delaying the operation of the automated public transit vehicle. Indeed, as currently written, the bill subjects the Good Samaritan passenger to be arrested and charged with a class C felony if he/she holds the door open for an elderly passenger. One must keep in mind that there will be passengers who have physical difficulties in entering or exiting rail cars; there will also be passengers (including tourists and immigrants unfamiliar with the English language) who may be confused as to whether one should exit the rail car. Parents with young children or adults with elderly parents may need additional time to enter/exit the rail car. As HART will stop at the Daniel K. Inouye International Airport, passengers with luggage may need additional time to embark/disembark the rail car. Moreover, it is not inconceivable that one member of a party may reach the door of a rail car earlier than the rest of his/her party, and that member’s instinct will be to hold the door until the rest of the party (which may include an elderly or disabled person) arrives.

Certainly, one would hope that the above individuals would prevail at court if formally arrested and charged with this offense. However, because the offense is a class C felony, the individual will be arrested and booked. A citation to appear in court will not be an option. The individual will be required to remain in jail unless he/she posts bail or is released by a judge; the individual will need to obtain the services of an attorney; and the individual will be subject to the inconvenience and stress of a pending criminal case.

We also oppose the “reckless” state of mind included in the same passage. An individual who intentionally or knowingly causes a malfunction or breakdown of the operation of an automated public transit vehicle is substantially more culpable than an individual who recklessly causes a malfunction or breakdown of the operation of an automated public vehicle. Young and immature individuals tossing an object around while waiting for a rail and recklessly causing the object to fall onto the rail tracks resulting in a breakdown or malfunction should not be subject to the same penalties as someone who intentionally or knowingly causes a malfunction or breakdown.

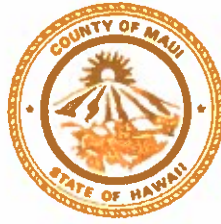
But most significantly, we don’t think that interfering with operations of the vehicle should be equal to harming or threatening to harm a human being, i.e., the operator of the vehicle. That accords property an equality to persons that it should not have. At the very least, this new offense should be classified as a misdemeanor rather than a felony. That, of course, will not cure the constitutional issues with this proposed legislation.

Thank you for the opportunity to comment on H.B. No. 1725.

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February 12, 2020

TO: The Honorable Representative Chris Lee, Chair  
The Honorable Representative Joy A. San Buenaventura, Vice Chair  
The Honorable Members of the Committee on Judiciary

Hearing Date/Time: Wednesday, February 12, 2020 3:00 PM  
Place: Hawaii State Capitol, Conference Room 325  
415 South Beretania Street

FROM: Marc I. Takamori   
Director of Transportation

SUBJECT: Testimony in **SUPPORT** of HB1725 – RELATING TO FELONIES

Dear Chair Lee, Vice Chair San Buenaventura, and Members of the Committee,

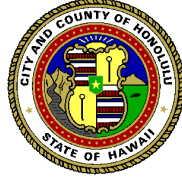
The County of Maui, Department of Transportation (MDOT) **SUPPORTS** HB1725 which seeks to amend the existing statute that addresses the offense of interference with the operator of a public transit vehicle to also include the interference with the automated operation of a public transit vehicle. HB1725 allows for interference with an automated operation to be charged as a class C felony. With the advancement of transportation technology, the current law must be updated. Passengers on these automated public transit systems must be afforded the same protections.

Thank you for providing us the opportunity to provide testimony on this matter.

DEPARTMENT OF TRANSPORTATION SERVICES  
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JON Y. NOUCHI  
DEPUTY DIRECTOR

TESTIMONY TO THE  
HOUSE COMMITTEE ON JUDICIARY (JUD)

FEBRUARY 12, 2020  
3:00 PM

**IN SUPPORT OF  
HB 1725 – RELATING TO FELONIES**

Chair Lee, Vice Chair San Buenaventura, and Members of the Committee:

The Department of Transportation Services is in strong support of this measure; it is part of the Hawaii Council of Mayors (HCOM) 2020 legislative package.

This measure seeks to amend the existing statute that addresses the offense of interference with the operator of a public transit vehicle to also include the interference with the automated operation of a public transit vehicle. HB 1725 allows for interference with an automated operation to be charged as a class C felony.

When Section 711-1112, Hawaii Revised Statutes, was enacted in 1996, the Hawaii State Legislature found that adding this new offense was appropriate and necessary given the “heightened danger to the public involved when such drivers are assaulted or terrorized” [Conference Committee Report 30 on H.B. 3046 (1996)]. The same is true today, but the current law must be updated to cover advances in transportation technology made in the past 25 years. Automated operation of public transit, and specifically driver-less operations, are a reality in Hawaii and passengers on these public transit systems must be afforded the same protections.

Thank you for consideration of this measure and for the opportunity to provide this testimony.