

STATE OF HAWAI‘I
OFFICE OF THE PUBLIC DEFENDER

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

February 24, 2020

H.B. No. 1735: RELATING TO OFFENSES AGAINST PROPERTY RIGHTS

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

The Office of the Public Defender respectfully opposes H.B. No. 1735.

The proponents of this measure assert,

Current statutory provisions have been rendered ineffective by state court rulings that require the State to prove that a defendant operating or occupying a stolen vehicle knew that the vehicle was stolen. In the great majority of cases, this requires a confession from the defendant, which may be difficult to obtain because defendants have the right to remain silent. Thus, law enforcement is often hindered in meeting the burden of proof needed to prosecute these cases.

For the offense of Unauthorized Control of a Propelled Vehicle (“UCPV”), the prosecution must prove the following:

1. The Defendant intentionally or knowingly;
2. Exerted unauthorized control over another’s propelled vehicle by operating the vehicle without the owner’s consent; or
3. Exerted unauthorized control over another’s propelled vehicle by changing the identity of the vehicle without the owner's consent.

Therefore, the state of mind for UCPV is intentionally or knowingly. The reason for the state of mind for UCPV is to ensure that only those who intentionally or knowingly exert unauthorized control over another’s vehicle will be punished. The legislature astutely recognized that it is simply wrong to punish those who did not intentionally or knowingly exert control over another’s vehicle.

Moreover, the legislature also enacted H.R.S. section 702-218 to further ensure that individuals who did not have a “guilty mind” would not be punished. H.R.S. section 702-218 provides the following:

In any prosecution for an offense, it is a defense that the accused engaged in the prohibited conduct under ignorance or mistake of fact **if**:

- (1) The ignorance or mistake negatives the state of mind required to establish an element of the offense; or
 - (2) The law defining the offense or a law related thereto provides that the state of mind established by such ignorance or mistake constitutes a defense.
- (Emphasis Added).

H.B. No. 1735, however, seeks to punish those who innocently caused the harm; that is, H.B. No. 1735 seeks to punish those did not intend or did not know that he/she was exerting unauthorized control over someone else's vehicle. This could involve situations where the lender or seller produced a key to the ignition, leading any reasonable person to believe the use of the vehicle was authorized. It is simply wrong to punish such behavior as a

Second, the proponents assert that obtaining convictions for the offense of UCPV is too difficult without providing any statistical data for the number of cases that resulted in acquittal or cases that were dismissed or cases that were not charged. They assert that "[in] a great majority of cases, this requires a confession from the defendant." We dispute that it is difficult for the prosecution to meet its burden in many cases. Many cases involve vehicles with broken door locks and/or broken ignitions; certainly, the prosecution should be able to establish that the defendant knowingly (i.e., was aware) that he/she was exerting unauthorized control of a propelled vehicle without a confession. Other cases involve defendants who informed the police that they purchased a vehicle at a very reduced rate that is too good to be true from an individual, who they only know by a first name or a nickname. Again, the prosecution should be able to obtain a conviction for UCPV in such circumstances.

In fact, they do. Hawai'i Paroling Authority (HPA) statistics for fiscal year 2019 show minimum terms were set for **118 persons** convicted of UCPV who committed **174 UCPV offenses**. UCPV defendants were the second highest number of defendants given minimum terms for offenses against property. Where are the statistics supporting the proponents' contentions?

Finally, there are other serious concerns regarding the proposed offense of Unauthorized Detention of a Propelled Vehicle. The measure requires the person to make "a reasonable inquiry as to whether the other person had the legal right to sell or deliver the propelled vehicle." What is a reasonable inquiry? The phrase "reasonable inquiry" is subject to *ad hoc*, inconsistent, and arbitrary enforcement by law enforcement, prosecutors, juries, and the courts. Is simply asking the other person, "Is this vehicle stolen" considered a reasonable inquiry? Or will the person need the other person to produce registration papers or contact the Department of Motor Vehicles to ensure ownership to satisfy the "reasonable inquiry" requirement. Essentially, anytime an individual borrows a vehicle from another person (including a friend, relative, co-worker), the borrower is mandated to conduct a "reasonable inquiry."

The other concern regarding the proposed offense is that the state of mind required is negligence. If this measure is enacted, the required state of mind should be recklessness. The prosecution should be required to prove that the defendant consciously disregard a substantial and unjustifiable risk (i.e., recklessly). A defendant should not be convicted of the offense based simply on the premise that the defendant should be aware of a substantial and unjustifiable risk (i.e., negligently).

Thank you for the opportunity to comment on H.B. No. 1735.

DEPARTMENT OF THE PROSECUTING ATTORNEY
CITY AND COUNTY OF HONOLULU

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**THE HONORABLE CHRIS LEE, CHAIR
HOUSE COMMITTEE ON JUDICIARY
Thirtieth State Legislature
Regular Session of 2020
State of Hawai'i**

February 24, 2020

RE: H.B. 1735; RELATING TO OFFENSES AGAINST PROPERTY RIGHTS.

Chair Lee, 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 supporting the intent of H.B. 1735, with suggested amendments.

The purpose of H.B. 1735 is to address current issues of proof, when someone is found driving a stolen vehicle and claims that they “didn’t know” the vehicle was stolen. This has indeed been a challenge for our Department and for the Honolulu Police Department in many situations, and we do support the passage of legislation to address this.

Rather than the specific language proposed in H.B. 1732, however—which would create a new, standalone offense with additional and technically unnecessary elements—our Department would recommend that the Committee:

- (1) Amend HRS §708-836 to be “Unauthorized control of a motor vehicle in the first degree”; and
- (2) Create a new offense of “Unauthorized control of a motor vehicle in the second degree,” by copying the language from HRS §708-836, and replacing the words “intentionally or knowingly” with the word “negligently.”

The Department believes these changes would more fully and precisely address the problem raised by H.B. 17325 and would support the passage of language to this effect. Thank you for this opportunity to testify.

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OUR REFERENCE WO-KK

February 24, 2020

LATE

The Honorable Chris Lee, Chair
and Members
Committee on Judiciary
House of Representatives
Hawaii State Capitol
415 South Beretania Street, Room 325
Honolulu, Hawaii 96813

Dear Chair Lee and Members:

SUBJECT: House Bill No. 1735, Relating to Offenses Against Property Rights

I am Walter Ozeki, Major of the Criminal Investigation Division of the Honolulu Police Department (HPD), City and County of Honolulu.

The HPD supports House Bill No. 1735, Relating to Offenses Against Property Rights.

Approximately 4,000 vehicles are stolen each year on the island of Oahu. The victimization of our citizens in these cases are even more impactful as these stolen vehicles are regularly utilized by the perpetrators to commit further, more serious crimes as we have regularly seen in recent history. These crimes include shootings, purse snatchings, and armed robberies to name a few. Often times these vehicles sustain costly damages in the process.

Due to the established case precedence in Hawaii's courts (particularly in cases where the vehicles' keys have been taken along with the vehicle, as this repeatedly happens in burglaries of residences), the drivers of these stolen vehicles regularly face little or no consequences by declining to provide a statement altogether or by providing a statement that investigators are unable to disprove no matter how implausible it may be. The entire burden of proof is placed upon the prosecution to establish that the accused knew that the vehicle was stolen. It is common for the accused in many of

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these cases to have a number of similar cases that were never adjudicated in their criminal history because they have learned to manipulate the system.

The use of a vehicle on our roadways is a privilege, one that if misused can result in extensive property damage, injury, and in the worst case death. There needs to be some measure of responsibility and accountability for a person operating a vehicle on our roadways to establish that at the very least they took reasonable steps to ensure that they are legally authorized to operate the vehicle and are doing so without malicious intent.

The HPD urges you to support House Bill No. 1735, Relating to Offenses Against Property Rights.

Thank you for the opportunity to testify.

Sincerely,


Walter Ozeki, Major
Criminal Investigation Division

APPROVED:



Susan Ballard
Chief of Police