

**STATE OF HAWAI‘I**  
**OFFICE OF THE PUBLIC DEFENDER**

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

February 12, 2020

H.B. No. 1738: RELATING TO THEFT IN THE SECOND DEGREE

Chair Lee and Members of the Committee:

The Office of the Public Defender respectfully opposes H.B. No. 1738, which would amend HRS Sect. 708-831 to add the following language to what constitutes Theft in the Second Degree:

- (f) Property commonly used to store items of personal or monetary value, including any purse, handbag, or wallet.

(Page 5, lines 1 to 3).

The proponents of this legislation assert that due to the high standard of proof required, i.e. proof beyond a reasonable doubt, the current offense of Theft in the Second Degree “is typically amended or dropped”. No statistics are included to support this assertion. We question amending Theft 2 as this bill proposes without solid evidence to support such an assertion.

In fact, a survey of our offices statewide indicates the assertion is not true. Our lawyers report that they go to trial on Theft 2 cases and have no experience that the charge is “typically” amended or dropped. They reported that for the most part, they are able to get a reduced theft charge when the defendant is also pleading to another felony offense such as credit card theft, fraudulent use of a credit card, unauthorized possession of confidential information, etc.

The proponents go on to assert that the proposed amendment “may deter potential offenders from engaging in theft of these items”, to wit, purses, handbags, or wallets, or anything that is commonly used to store items of personal or monetary value. The idea that the existence of a particular criminal offense serves as a deterrent to criminal activity has long been rejected. Those who engage in criminal conduct do not stop to weigh the judicial consequences of their actions.

Our concern about this proposed legislation is that it will turn current misdemeanor offenses into felony offenses which appears to be the intent of the proponents. However, if the legislature is inclined to do this, it needs to consider that our correctional facilities will quickly become more overcrowded and the burden on our already limited social services will grow exponentially.

We want to stress that this bill will have no effect on the recent spate of purse-snatchings which already meet the definition of Theft 2 as theft from the person. It will not have an effect on stealing a credit card which is already a felony under HRS Section 708-8102 or on using a stolen credit card which is already a felony under HRS Section 708-8100 if the value obtained is over \$300 in

a 6 month period. It will not have an effect on the use of personal information which might be obtained in the theft of “personal items” as that is already covered under the offenses of Identity Theft in the First, Second, and Third Degree, which are class “A”, “B” and “C” felonies, respectively. Finally, the mere unauthorized possession of personal information is already covered under HRS Section 708-839.55 and is a felony.

This proposed legislation is overly broad in seeking to apply to “property commonly used to store items of personal or monetary value”. That would include any type of bag. Regarding “personal value”, that could include picture albums carried in purses, and a myriad of other items that are of “personal value” to the owner.

This bill is not necessary to address the scenarios described in Section 1 of the bill. As noted above, those scenarios are already covered in our Penal Code. What this bill will do is treat misdemeanants as felons, add to already overcrowded jail facilities and further clog our judicial system.

Finally, we would note that the reference to State v. Cabrera, 90 Hawai`i 359, 978 P.2d 797 (1999), in Section 1 on page 1 is incorrect. The reference states that the decision in the case dealt with “property or services valued in excess of \$750.00”. In 1999, the threshold amount for Theft in the Second Degree was \$300.00 and that is the amount referenced in the Cabrera decision.

Thank you for the opportunity to comment on this measure.

DEPARTMENT OF THE PROSECUTING ATTORNEY  
**CITY AND COUNTY OF HONOLULU**

ALII PLACE  
1060 RICHARDS STREET • HONOLULU, HAWAII 96813  
PHONE: (808) 768-7400 • FAX: (808) 768-7515

DWIGHT K. NADAMOTO  
ACTING PROSECUTING ATTORNEY

LYNN B.K. COSTALES  
ACTING FIRST DEPUTY  
PROSECUTING ATTORNEY



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

February 12, 2020

**RE: H.B. 1738; RELATING TO THEFT IN THE SECOND DEGREE.**

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 submits the following testimony in support of H.B. 1738.

The purpose of H.B. 1738 is to amend the offense of Theft in the Second Degree (§708-731, H.R.S.), to include the theft of property which is commonly used to store items of personal or monetary value which would include purses, handbags or wallets.

Currently, to charge and convict a defendant for the charge of Theft in the Second Degree, the Department must be able to prove beyond a reasonable doubt that the defendant intentionally took property of another and that the defendant was aware or believed that the value of the property exceeded \$750. This state of mind is very difficult or near impossible when dealing with the theft of someone's purse or wallet.

The Department would suggest adding in the language after "including" on page 5 line 2 to include, "but not limited to" will ensure that similar items that perform the same function but may not be interpreted specifically as a purse or wallet could be covered and protected.

For these reasons, the Department of the Prosecuting Attorney supports the passage of H.B. 1738. Thank you for this opportunity to testify.

**HB-1738**

Submitted on: 2/10/2020 10:42:17 PM

Testimony for JUD on 2/12/2020 3:00:00 PM

<b>Submitted By</b>	<b>Organization</b>	<b>Testifier Position</b>	<b>Present at Hearing</b>
Larry Veray	Individual	Support	No

Comments:

Although I am Chair of the Pearl City Neighborhood Board, I am submitting this testimony as an individual. We need to be tough on crime against our citizens.