



**Office of the Public Defender  
State of Hawaii  
William Bagasol, Deputy Public Defender**



**Testimony of the Office of the Public Defender,  
State of Hawaii to the House Committee on Judiciary  
February 11, 2020**

**Hearing: February 12, 2020 at 3:00 p.m.**

**LATE**

**Chair Chris Lee, Vice Chair San Buenaventura and Committee Members**

The Office of the Public Defender strongly opposes HB No. 2109.

This Bill does little to prevent the type of egregious conduct described in the preamble of the proposed legislation.

**1. Enforcement of Current Laws Already Carry Serious Penalties**

There are current laws on books that would assure harsher penalties for any heinous criminal conduct. Under the facts mentioned in the preamble, current laws are applicable with severe penalties. If caught, these individuals are facing at least Robbery in the Second Degree charge (already a class B felony), Assault in the First Degree (Class B) (breaking a hip) charges. A class B felony can already be enhanced to double the term of imprisonment to 20 years if an offender is charged with more than one felony or an offender has an extensive record or defendant is an offender against the elderly. (See HRS § 706-661, 662). Multiple charges may run consecutively. (See HRS § 706-668.5). Furthermore, a mandatory minimum jail sentence should be imposed as the victim is over 60 years of age. (See HRS § 706-660.2) This is not an extensive or complete list of possible sentencing options.

As for the midnight robbery and carjacking incident, the perpetrator in that case would possibly face Robbery, Attempted Theft, Attempted Unauthorized Control of Propelled Vehicle charges, as well as the possibility of an Attempted Murder charge that already carries the possibility of **life** in prison. Under certain circumstances if shown to be warranted, the possible sentence can be extended to life without the possibility of parole. So, as we can see, there are offenses and statutes that is already exists involving serious jail terms.

Apprehending the right individuals and successfully prosecuting these people under existing laws would achieve the intended results for the HB No. 2109.

## 2. The Proposal Does Not Target the Specific Conduct

Increasing the grade of offenses will hardly deter an offender already looking at 20 years to life for the described conduct. It is difficult to say what a typical or common petty theft, criminal property damage charge or the mutual affray have in common with violent offenses mention in the Bill. Most do not have anything reasonably related to the type of heinous or egregious conduct that would necessitate increasing the penalty provisions.

## 3. Unintended Consequences can be devastating and will come at a cost

HB No. 2109 casts a net too wide. This dragnet would naturally capture people typically not involved in violent crime. While offenders involved with egregious conduct should face their just punishment, HB No. 2109 proposes to increase penalties for cases that do not involve the same kind of heinous conduct. It will impose jail time or imprisonment for some that should not be treated that way.

Currently many of these affect charges are now normally handled by the District Courts. Under HB No. 2109, increasing the penalties of relatively minor conduct will open the flood gates to the Circuit Court. These individuals will unnecessarily fill our jails as bail would necessarily be higher and pointlessly demanding a human price. More people will be in custody pretrial and thus increasing the likelihood of longer prison sentences. Invariably, the poor and minorities will suffer. Historically, our native Hawaiian people have shown to be a disproportionate part in the criminal justice system.

Such a drastic change in penalties would be imposed without full analysis and scrutiny of the benefits and consequences as it was last done by the Hawaii Penal Code Review Committee, pursuant to House Concurrent Resolution No. 155, S.D. 1 (H.C.R. No. 155, S.D. 1), Twenty-Eighth Legislature of the State of Hawai`i, Regular Session of 2015. In 2015, after such an exhaustive review of our Penal Code, in comparison with other authorities such as the Model Penal Code, there was no such proposal or recommendation to do a wholesale step-up increase in the classes of offenses, in order to keep our community safe.

In fact, the legislature has recently received many recommendations, testimonies and studies relating to the devastating impact of incarceration on individuals, their families, our communities and thus by extension all of us. **See** **Costs of Detention, Hawai`i Criminal Pretrial Reform, Recommendations of the Criminal Pretrial Task Force to the Thirtieth Legislature of the State of Hawai`i** (Dec. 2018), citing various studies, pages 24-26. In reaching this conclusion, the Task Force quoted the Vera Institute of Justice (2015):

These consequences—in lost wages, worsening physical and mental health, possible loss of custody of children, a job, or place to live—harm those incarcerated, and, by extension, their families and communities. Ultimately, these consequences are corrosive and costly for everyone because no matter how disadvantaged people are when they enter jail, they

are likely to emerge with their lives further destabilized and, therefore, less able to be healthy, contributing members of society.

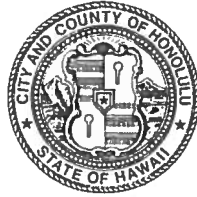
Id. at page 25.

The consequences of this HB No. 2109 run counter to the various initiatives, such as HCR 85, Prison Reform Task Force (2016), to reduce the prison population. Moreover, this Bill becomes law we can expect the increase of budgets state-wide across the entire criminal justice system.

For the foregoing reasons, the Office of the Public Defender strongly opposes HB No. 2019. Thank you.

POLICE DEPARTMENT  
CITY AND COUNTY OF HONOLULU

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SUSAN BALLARD  
CHIEF

JOHN D. MCCARTHY  
CLYDE K. HO  
DEPUTY CHIEFS

OUR REFERENCE: WO-KK

February 12, 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. 2109, Relating to Criminal Penalties

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

The HPD opposes House Bill No. 2109, Relating to Criminal Penalties.

While the HPD as a general rule does not oppose the increasing of penalties for certain criminal offenses, we appreciate the intent of this bill. The offenses contained in this bill are some of the most common crimes that the HPD encounters on a daily basis and the blanket increase in penalties for these classes of crimes; particularly those that originally include a misdemeanor offense would create an overwhelming increase of thousands of additional felony offenses. In the categories of assault and criminal property damage alone, the increase in penalties would create approximately 5,000 additional criminal offenses that would have to be investigated and possibly prosecuted as felonies. These increases in numbers are far greater than the police department, prosecutor's office, or judiciary would be able to reasonably manage.

The HPD urges you to oppose House Bill No. 2109, Relating to Criminal Penalties.

The Honorable Chris Lee, Chair  
and Members  
February 12, 2020  
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Thank you for the opportunity to testify.

Sincerely,

  
Walter Ozeki, Major  
Criminal Investigation Division

APPROVED:

  
Susan Ballard  
Susan Ballard  
Chief of Police

**FIGHT CRIME. FIND YOUR STUFF.**



February 11<sup>th</sup>, 2020

To: House Committee on Judiciary  
Representative Chris Lee  
Representative Joy A. San Buenaventura

RE: HB2109 – Relating to Criminal Penalties

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

I fully support SB2109 which increases certain penalties for the crimes of assault, burglary, criminal property damage, and theft by one grade.

I am the founder and administrator of Stolen Stuff Hawaii (SSH). SSH is Hawaii's largest anti-crime Facebook group with over 132,000 plus vetted Hawaii-based members and growing. Our mission is to use the power of social media to help those who have been victimized by crime by helping them to locate their stolen property, provide emotional support, as well as awareness.

Our reach and influence are substantial, with members located throughout the State of Hawaii in all counties and districts. The majority of our members reside on Oahu, meaning we have just under 10% of the population in our group. We are serious about anti-crime.

It's time we defend our community. It's time we make a stand against criminals who seek to repeatedly victimize them. Our community is tired of being the victim. We have a great many victims who repeatedly ask the same question: Why are these criminals not being punished? Why are they free to victimize repeatedly?

This bill offers further deterrence...currently, criminals receive a slap on the wrist for most of their crimes, even violent ones rarely end up with serious circumstances. This bill offers an opportunity to rectify this dire situation. I support the intent of this bill and I hope that you do as well.

This bill has been shared to my group within the following thread:

<https://www.facebook.com/groups/stolenstuffhawaii/permalink/2554359668160030/>

Sincerely,

A handwritten signature in black ink, appearing to read "Michael J. Kitchens".

Michael J. Kitchens  
Creator & Administrator,  
Stolen Stuff Hawaii

[https://www.facebook.com/groups/stolenstuffhawaii/  
mikek@stolenstuffhawaii.com](https://www.facebook.com/groups/stolenstuffhawaii/mikek@stolenstuffhawaii.com)

**HB-2109**

Submitted on: 2/11/2020 8:01:49 AM

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>
Lionel Delos Santos	Individual	Support	No

Comments:

Aloha legislature , I support this bill , it will hopefully stop home invasion ,theft and someone from coming in and stealing my things, I have my neabor house get broken into by homeless crackhead that wonder around the waimalu area ,I have to put security cam to wathch my proprity, in fear of my stuff getting stolen.

Thank you for the time to read my testimony

lionel



**HB-2109**

Submitted on: 2/11/2020 8:46:23 AM

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>
Kelli Buenconsejo	Individual	Support	No

Comments:

I am in support of HB2109 to increase penalties for crimes. Our state is changing for the worse, especially with the recent uptick of violent crimes. Law enforcement works so hard to catch these criminals, but then they are released back into society without penalties. This is not only frustrating, but very dangerous for our communities, as we've seen with offenders with multiple convictions are back on the streets terrorizing people again.

We need to keep these offenders in jail. Mental health and substance addiction increases their violent tendencies and treatment needs to be addressed when they are in prison.

Releasing them back into their community and trying outpatient treatment does not seem to be working. They will often return to their previous life of crime, drugs, etc instead of "obeying their court mandated treatment". The state needs to protect its people, all of its people. Right now it appears that state laws seem to favor the assisilant and not the Victims. This needs to change and having stricter penalties should hopefully help. It will reinstate the belief that Hawaii is a safe place to live again.

**HB-2109**

Submitted on: 2/11/2020 9:18:36 AM

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>
Anastasia Kamealoha	Individual	Support	No

## Comments:

According to police chief not much change in stats on crimes being submitted. The number of violent crimes with use of weapons or deadly force has. There's many reasons, like a corrupt judicial system allowing repeat violent offenders thru a turnstile with a slap on the wrist. Adding more victims while chalking up a lengthy rap sheet! Major, I mean MAJOR! changes need to occur & I'm sure they will but for now one step at a time...and this is a start!

**HB-2109**

Submitted on: 2/11/2020 9:20:15 AM

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>
Stephanie Manera	Individual	Support	No

Comments:

I fully support this as Hawaii has become riddled with an increase of repeat offenders.

**HB-2109**

Submitted on: 2/11/2020 10:34:20 AM

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>
John Kamioka	stolen stuff HI	Support	No

Comments:

Make penalties tougher

**HB-2109**

Submitted on: 2/11/2020 11:19:59 AM

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>
Joseph	Individual	Oppose	No

Comments:

Penalties matter less than enforcement. If the probability of apprehension or prosecution is slight, than the penalty doesn't matter. I was assaulted and lacking the resources the prosecutor decided they had more important cases to prosecute. So what good would a stiff penalty have been? This is a feel good measure. It is just legislators standing up and saying "see I am doing something when you are doing nothing of substance. Our police & prosecutors do not need to be armed with stiff penalties but with time and funding to apprehend and THEN punish/rehabilitate offenses.

Assume the death penalty for assault or robbery. But add that the chance of getting caught or prosecuted is .002%. I'd bet my life that the penalty would deter no one.

Stiff penalties only restrict people from society for longer. We have to pay for that. An ounce of prevention is worth a pound of cure. What rehabilitation efforts will accompany this bill? This bill will accomplish nothing but cost us money. Aloha for your consideration. Joe Bussen T

**HB-2109**

Submitted on: 2/11/2020 1:40:48 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>
Desirae McBarnet	Individual	Support	No

Comments:

I support this Bill. Please increase the charges for criminals convicted of crimes in hopes that this will deter them from committing more offenses.

**HB-2109**

Submitted on: 2/11/2020 2:01:35 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>
Sheila Gage	Individual	Support	No

Comments:

I support this bill. Thank you

**HB-2109**

Submitted on: 2/11/2020 2:32:33 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>
Margaret Philpott	Individual	Support	No

Comments:

We need to toughen up these laws and the criminals need to know it. Hawaii seems to be getting a bad reputation. I think residents are getting fed up and feel like nothing is being done to help the victims which we are now reading about every day. We need help!



**HB-2109**

Submitted on: 2/12/2020 9:55:37 AM

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

**LATE**

<b>Submitted By</b>	<b>Organization</b>	<b>Testifier Position</b>	<b>Present at Hearing</b>
May Mizuno	Individual	Support	No

Comments:

February 11, 2020

Hearing Date: February 12, 2020

TO: COMMITTEE ON JUDICIARY

Chair Chris Lee

Vice Chair Joy San Buenaventura

Members of the Committee

From: May Mizuno

Chair, Neighborhood Board 16

Re: **HB2109 in STRONG SUPPORT**

We see in the news almost every day, criminals striking everywhere in our Aloha State. Examples cited in the bill are only a few of the unprecedented incidents as there have been many more similar crimes since then. How do we stop them? We need to do something to protect our community. These crimes can happen to me, to you, to our family and to friends anytime, anywhere. We need to pass a law that stiffens penalties.

Because these crimes come with misdemeanor penalties, criminals keep on committing the same offenses repeatedly and victimize more people. Our community deserves better protection.

For the foregoing reasons, I respectfully request your support of HB2109. Mahalo!