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THE HONORABLE SYLVIA LUKE, CHAIR
HOUSE COMMITTEE ON FINANCE
Thirtieth State Legislature
Regular Session of 2020
State of Hawai'i

February 25, 2020

RE: H.B. 2571, H.D. 1; RELATING TO THEFT.

Chair Luke, Vice-Chair Cullen and members of the House Committee on Finance, the Department of the Prosecuting Attorney of the City and County of Honolulu submits the following testimony in support of section 2 of H.B. 2571, H.D. 1.

The purpose of section 2 in H.B. 2571, H.D. 1 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. 2571, H.D. 1. Thank you for this opportunity to testify.

HB-2571-HD-1

Submitted on: 2/24/2020 3:36:13 PM

Testimony for FIN on 2/25/2020 11:00:00 AM

Submitted By	Organization	Testifier Position	Present at Hearing
Chad Taniguchi	Hawaii Bicycling League	Support	Yes

Comments:

The Hawaii Bicycling League supports providing more opportunities for police to deter bike theft by charging and arresting bike thieves. Like horse thieves of the past, and car thieves of today, bike thieves take an important means of transportation to choose zero emission active transportation means to do our business, get to work, shop, enjoy life, stay healthy and fight climate change.

Bike theft actually prevents and deters people from biking. Bike theft needs to be effectively stopped. This bill is one important way.

The legislature could encourage bike usage by comprehensively addressing bike theft. The DOT could be asked to call together police, prosecutors, the county bike registration offices, the judiciary, and advocates like the Hawaii Bicycling League to identify problems with bike registration and the recovery of stolen bicycles, and to recommend other changes in law and procedure.

Thank you.

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 Finance

February 25, 2020

H.B. No. 2571 HD1: RELATING TO THEFT

Chair Luke, Vice Chair Cullen, and Members of the Committee:

PART I

The Office of the Public Defender respectfully opposes H.B. No. 2571 HD1 which would amend HRS § 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 2nd Degree, as this bill proposes without solid evidence to support such an assertion.

In fact the Hawai‘i Paroling Authority (HPA) statistics for fiscal year 2019 show minimum terms were set for **131 persons** convicted of Theft 2 who committed 226 **Theft 2 offenses**. Theft 2 defendants were the highest number of defendants given minimum terms for offenses against property. These numbers do not include the number of Theft 2 defendants placed on probation. Where are the statistics supporting the proponents’ contentions?

In fact, a survey of our offices statewide indicates the assertion is not true. Our lawyers report that they go to trial on Theft 2nd 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 theft 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 2nd Degree as theft from the person. It will not have an effect on stealing a credit card which is already a felony under HRS § 708-8102 or on using a stolen credit card which is already a felony under HRS § 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 § 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.

PART II

The Office of the Public Defender also opposes that portion of H.B. No. 2571 HD1, which would create the separate offense of theft of bicycle.

Current theft statutes adequately cover all forms of theft of personal property including bicycles. The penalties for the theft offenses are dependent upon the value of the items stolen. We believe this is the appropriate and proper method for the classification of property crimes. Bicycles, similar to many other types of personal property, vary greatly in value. For instance, a young person’s bike may have a value of less than \$50 or \$100, whereas a triathlete’s specialty bike may be valued in the thousands of dollars. The current structure of the theft statutes would account for such differences.

The proponents of this legislation note in Section 3 at page 6, line 12, that a prime consideration for this legislation is “in order to deter theft of all bicycles.” This legislation would not be a deterrence. Offenders do not stop to consider the judicial consequences of a crime before committing it. If the death penalty was not a deterrence to murder – and countless studies over the

years established that it wasn't – changing the classification of a crime is not going to be a deterrence to those set on committing it.

We appreciate that the H.D. 1 of this bill provided that a first offense would be a misdemeanor. However, we continue to believe that it does not make sense within the structure of our penal code to make, for a second offense, what is currently misdemeanor conduct – for bicycles valued under \$750.00 – a felony offense. This will result in higher numbers of pre-trial detainees and a greater burden on our criminal justice system, in the courts and in the probation offices tasked with monitoring convicted felons. Are additional resources going to be financed to deal with this increase?

Finally, we are concerned about the effect of this legislation on juvenile offenders. Bicycle theft is not an uncommon offense for a juvenile. The process through the Family Court and the effect of such a conviction on a juvenile record is far more complicated with a more punitive effect when it is a felony, rather than a misdemeanor offense. This should be taken into consideration.

Thank you for the opportunity to comment on this measure.