

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**

January 28, 2020

S.B. No. 2121: RELATING TO FELONIES

Chair Rhoads, Vice Chair Keohaokalole, and Members of the Committee:

The Office of the Public Defender respectfully opposes S.B. No. 2121.

We have serious concerns that this 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 to as to whether one should exit the rail car. Parent 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.

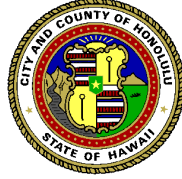
We also oppose the “recklessly” state of mind to be included in the same passage. An individual who intentionally or knowingly causes a malfunction or breakdown of the operation of an automated public transit vehicle is substantially more culpable than an individual who recklessly causes a malfunction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

Thank you for the opportunity to comment on S.B. No. 2121.

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TESTIMONY TO THE
SENATE COMMITTEE ON JUDICIARY (JDC)

JANUARY 30, 2020

**IN SUPPORT OF
SB 2121 – RELATING TO FELONIES**

Dear Chair Rhoads, Vice Chair Keohokalole, and Members of the Committee:

The Department of Transportation Services is in strong support 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. SB 2121 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.

SB-2121

Submitted on: 1/26/2020 11:05:22 PM

Testimony for JDC on 1/30/2020 10:00:00 AM

Submitted By	Organization	Testifier Position	Present at Hearing
Brett Kulbis	Testifying for Honolulu County Republican Party	Oppose	No

Comments:

Honolulu County Republican Party opposes SB 2123.

HRS 249 County Vehicular Taxes (§249-18 Highway Fund) states, all taxes collected under this chapter, except those collected pursuant to sections 249-14 and 249-14.5, shall be deposited in a fund to be known as the “highway fund” and shall be expended in the county in which the taxes are collected for the purposes and functions connected with traffic control and preservation of safety upon the public highways and streets, which should already cover the removal of abandon vehicles.

Hawaii is already known as having the highest cost of living in the country. Rather than responding to budget problems through tax hikes, which further raise our cost of living, you should be looking at your inefficiencies and where you can cut spending before imposing more taxes.

Adding another tax on the already tax burdened residents will only have a detrimental effect, unless this is just another way to force residents out of their vehicles and into public transportation.