

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**

March 11, 2020

S.B. No. 2153, S.D.1: 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 S.B. No. 2153, S.D.1.

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).

S.B. No. 2153, S.D.1, however, seeks to punish those who innocently caused the harm; that is, it 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 crime, much less to make it an affirmative defense to defend the charge, as the S.D.1 does.

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) exerted 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.

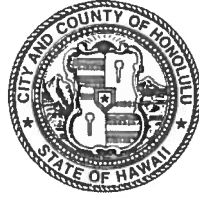
In fact, they do. Hawai'i Paroling Authority (HPA) statistics for fiscal year 2019 show minimum terms were set for **118 persons** convicted of UCPV who committed **174 UCPV offenses**. UCPV defendants were the second highest number of defendants given minimum terms for offenses against property. Where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

The other concern regarding the proposed offense is that the state of mind required includes negligence. If this measure is enacted, the required state of mind should be limited to recklessness. The prosecution should be required to prove that the defendant consciously disregard a substantial and unjustifiable risk (i.e., reckless state of mind that the vehicle was stolen. 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). We believe the addition of requiring that a defendant affirmatively prove that they received authorization to use the vehicle is especially problematic. Shifting the burden of proof to a defendant in a reckless or negligent situation is not a reasonable solution. .

Thank you for the opportunity to comment on this bill.

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OUR REFERENCE **WO-KK**

March 11, 2020

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: Senate Bill No. 2153, S.D. 1, 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 Senate Bill No. 2153, S.D. 1, 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 often these stolen vehicles are 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. These stolen vehicles often 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 often 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.

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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 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 he or she took reasonable steps to ensure that he or she is legally authorized to operate the vehicle and is doing so without malicious intent.

The HPD urges you to support Senate Bill No. 2153, S.D. 1, 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



March 10, 2019

Hon. Christopher Lee and Members of the Committee
Committee on Judiciary
Hawaii House of Representatives

RE: Senate Bill 2153 – Unauthorized Detention of a Propelled Vehicle

Dear Chair Lee and Members of the Committee:

The National Insurance Crime Bureau (NICB) is a national, century-old, not-for-profit organization supported by approximately 1,300 property and casualty insurance companies including many who write business in Washington. Working hand-in-hand with our member companies and law enforcement, we combat insurance fraud and crime through data analytics, investigations, learning and development, government affairs and public affairs.

With around 800,000 vehicles stolen each year in the United States, every state in the country is affected -- but not equally. Some states, and communities within, see significantly higher vehicle theft rates than other states, even among geographies with similar socioeconomics. This is the case in Hawaii where, 2018 FBI crime statistics that Hawaii has the third highest rate of motor vehicle theft in the nation.

Vehicle theft is not a benign crime. Vehicles are often stolen under violent conditions, and increasingly criminal rings are turning to stolen cars to make big money and to commit other crimes. Vehicle theft increases familial stress, impedes access to work, and leads to higher insurance premiums for all Hawaiians.

For these reasons, the National Insurance Crime Bureau (NICB) encourages you to pass SB 2153 as amended which will give law enforcement an added, important tool to ensure those involved in motor vehicle thefts face prosecution instead of walking away scot free.

Thank you for your consideration. Please be sure to contact me at 847-544-7083 or hhandler@nicb.org if you have any further questions or concerns.

Sincerely,

A handwritten signature in blue ink that reads "Howard Handler".

Howard Handler
Government Affairs Director