

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 31, 2021

H.B. No. 171, HD1, SD1: RELATING TO PROPERTY CRIMES.

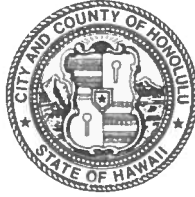
Chair Rhoads, Vice Chair Keohokalole, and Members of the Committee:

The Office of the Public Defender supports H.B. No. 171, HD1, SD1. We note the changes made to this measure that addressed our concerns and we are in support.

Thank you for the opportunity to comment on this measure.

POLICE DEPARTMENT
CITY AND COUNTY OF HONOLULU

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OUR REFERENCE PO-LS

April 1, 2021

The Honorable Karl Rhoads, Chair
and Members
Committee on Judiciary
State Senate
Hawaii State Capitol
415 South Beretania Street
Honolulu, Hawaii 96813

Dear Chair Rhoads and Members:

SUBJECT: House Bill No. 171, H.D. 1, S.D. 1, Relating to Property Crimes

I am Captain Paul Okamoto of the Criminal Investigation Division of the Honolulu Police Department (HPD), City and County of Honolulu.

The HPD supports House Bill No. 171, H.D. 1, S.D. 1, Relating to Property Crimes.

Currently, HPD officers are unable to conduct any meaningful enforcement when secondhand dealers purchase stolen goods. Mostly all enforcement actions have been recently unsuccessful in court, as the state of mind of determining "knowingly" has been too high a burden.

The purpose is not to punish those secondhand dealers that inadvertently misspells or occasionally commits a clerical error in their reporting but rather to hold those who are purposefully subversive in properly recording potentially stolen or suspicious items accountable for their actions. Some unscrupulous dealer can omit the description and willfully disregard other mandatory reporting fields in order to hide the purchase of questionable items. Such actions have previously been enforced via citations upon discovery by our detectives. However, recent efforts to bring dealers into compliance have been frustrated by the high state of mind standard. In the last five years that enforcement via citations were conducted, 2 were found not guilty and 20 plead guilty. The remainder, 30 out of 52, were dismissed because the state of mind of "knowingly" could not be sufficiently proved in court. There will be no incentive to properly follow the records of transaction statute if dealers cannot be prosecuted for it.

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The HPD fully supports secondhand dealers that are recording items correctly and legitimately. It is in everyone's best interest (including the dealers) that we ensure that proper recordation of all items purchased or pawned is accurate.

Changing the state of mind required for Section 486M-7, Hawaii Revised Statutes, to a lower standard will allow the HPD to better conduct enforcement and eliminate pathways in which stolen goods are sometimes trafficked.

The HPD strongly urges you to support House Bill No. 171, H.D. 1, S.D. 1, Relating to Property Crimes.

Thank you for the opportunity to testify.

Sincerely,



Paul Okamoto, Captain
Criminal Investigation Division

APPROVED:



Susan Ballard
Chief of Police

DEPARTMENT OF THE PROSECUTING ATTORNEY
CITY AND COUNTY OF HONOLULU

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THE HONORABLE KARL RHOADS, CHAIR
SENATE COMMITTEE ON JUDICIARY
Thirty-First State Legislature
Regular Session of 2021
State of Hawai`i

April 1, 2021

RE: H.B. 171, H.D. 1, S.D. 1; RELATING TO PROPERTY CRIMES.

Chair Rhoads, Vice Chair Keohokalole, and members of the Senate Committee on Judiciary, the Department of the Prosecuting Attorney of the City and County of Honolulu ("Department") submits the following comments regarding H.B. 171, H.D. 1, S.D. 1.

The original purpose of H.B. 171, was to amend the state of mind needed to prove pawn shop violations under Section 486M-7, Hawaii Revised Statutes ("HRS"), by making it "intentionally, knowingly or recklessly." Nevertheless, the current version of this bill does not make such a change, and simply adds the words "intentionally or" to the statute; this basically has no effect, as it only serves to indicate that the higher standard of "intentionally" may also be used to prove these charges, which is already allowed under the current language of the statute.

Obviously, lowering the state of mind for these offenses, from "knowingly" to "recklessly," would make it marginally "easier" to prosecute those who violate these statutes (though everything would still need to be proven beyond a reasonable doubt). We understand that some people may worry that a defendant could be prosecuted for a simple accident, based on their everyday understanding of the word "reckless." However, our Penal Code' definition of "reckless" is actually much more stringent, requiring that the actor "**consciously disregard[] a substantial and unjustifiable risk.**" "A risk is substantial and unjustifiable...[only] if, considering the nature and purpose of the person's conduct and the circumstances known to him, the disregard of the risk involves a **gross deviation from the standard of conduct that a law-abiding person would observe in the same situation.**" (*See* HRS §702-206(3), Definitions of states of mind. Emphasis added.) This and all other aspects of an offense would still have to be

proven beyond a reasonable doubt, and the Department does not charge any case unless we believe we have sufficient evidence to prove that case beyond a reasonable doubt.

If the Committee chooses to re-insert the word “reckless” into this bill, as it appeared under H.B. 171, H.D. 1, the Department believes that would help to deter illicit dealings by would-be offenders, and protect the integrity of the pawnbroker business for the law-abiding business owners that make up the vast majority of this industry. Ensuring proper transactions and recordkeeping by pawnbrokers would also help to deter any of their clients from attempting to move stolen goods through the pawnbrokers’ businesses, and eliminate one means by which criminals have traditionally attempted to sell stolen goods for quick cash.

Thank you for the opportunity to testify on H.B. 171, H.D. 1, S.D. 1.

March 30, 2021

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Honorable Karl Rhoads, Chair
Honorable Jarrett Keohokalole, Vice Chair
Senate Committee on Judiciary

Re: H.B. 171- RELATING TO PROPERTY CRIMES

Dear Chair Rhoads, Vice Chair Keohokalole & Committee Members,

On behalf of the Hawaii Pawnbrokers Association, we respectfully **oppose H.B. 171.**

Pawnbrokers and Secondhand Dealers are licensed by their respective counties to buy and give loans on secondhand items. Buying and loaning on secondhand items is not reckless behavior. We take a government issued I.D., fingerprint and submit all information to law enforcement. Hawaii Revised Statutes requires us to do this and there is nothing reckless about this.

If an item is purchased in good faith and the legal requirements for completing the purchase are followed but the item turns out to be stolen, this is not reckless behavior on the part of the pawnbroker or secondhand dealer.

The definition of “reckless” is the conscious disregard of a substantial and unjustifiable risk that the person’s conduct is of the specified nature. Reckless behavior would be firing a firearm into the air or driving 90 miler per hour in a 25 miles per hour zone.

But if the small business owner is arrested because law enforcement deemed that purchase to be reckless, what defines “reckless” when pawnshops and secondhand dealers followed the proper purchase or loan procedure and cooperated with law enforcement?

If an item turns out to be stolen, the suspect can be identified and arrested and the property is returned to the owner. Then the pawnbroker becomes the victim and suffers the financial loss.

If “reckless state of mind” is added to the statute, then can the pawnbroker be arrested for the innocent purchase of property? It’s impossible to apply “reckless” to these types of transactions. Adding “reckless” creates an atmosphere of fear among the small business owners. How do they buy secondhand merchandise without being afraid of being arrested? How are you supposed to know if an item is stolen? Do we profile people or stereotype them based on their race, where they live, or how they dress?

Even when a small business owner does his/her due diligence, inadvertently they could still buy something stolen and the consequence is a prison sentence and then the loss of their business license.

There is a reason why “reckless” is not in the statute to regulate pawnbrokers and secondhand dealers. It doesn’t work. It is impossible to apply that standard to businesses that are licensed by the

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respective counties to buy secondhand merchandise.

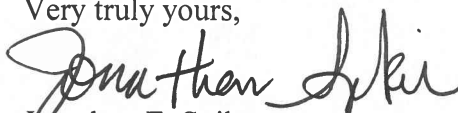
The bill promotes fear, stereotyping and profiling of minorities. We treat our customers with respect and dignity. Do we treat customers like criminals because they are a minority, and deny them service in our business?

The addition of the element of reckless behavior eliminates the necessary element of malicious intent which is necessary to establish a criminal intent in the commission of a crime with the knowledge that a criminal event is occurring. The term "reckless" gives the police and prosecution the power to charge whomever they wish in the pawnbroker/secondhand dealer industry so that a crime carries the loss of freedom and property as a consequence. This is a violation of due process rights in the United States Constitution 5th Amendment.

"Reckless" cannot be applied and that is why it is not in the statute now.

We ask that you do not pass this Bill. Thank you.

Very truly yours,



Jonathan E. Spiker

for

Hawaii Pawnbrokers Association

Testimony Opposing HB171
Submitted by John Spiker, Owner – Hawaii Gold & Silver Company

My name is John Spiker. I am the owner of Hawaii Gold & Silver Company and have been in business for over 40 years. I am the President of the Hawaii Pawnbroker's Association. I have been giving testimony at the Hawaii State Legislature since 1981.

I oppose HB171.

HB171 implies that large amounts of stolen property are sold to pawnshops and secondhand dealers. This is very misleading and inaccurate. Pawnshops and secondhand dealers are one of the most heavily regulated industries in the country. Less than $\frac{1}{10}$ of one percent of stolen property is found at pawnshops and secondhand dealers. That is a national statistic from the National Pawnbrokers Association. Local businesses also report the same low percentage. This statistic has been consistent for many years.

The current state of mind in HRS 486M-7 of “knowingly” is fair and just. It does not make sense to add “recklessly” to the state of mind in HRS 486M-7. In other contexts, it makes sense. For instance, someone that is driving 90 mph in a 25-mph zone and causes an accident that hurts or kills someone is clearly exhibiting reckless behavior.

To change the state of mind to reckless for small businesses will easily and often result in small business owners being prosecuted for innocent and harmless clerical errors or a simple typo. These errors have nothing to do with identifying a criminal or identifying and recovering stolen property. Extensive information and details are recorded about each customer and the property pawned or sold to our business. If some information is missing or misspelled, it does not affect law enforcement's ability to identify a person selling property and the identification of the property sold because of the amount of detailed personal and merchandise information that is recorded. Pawnshops and secondhand dealers are very helpful and cooperate with law enforcement.

Applying the reckless standard can result in a small business owner being arrested for a clerical error, spending a year in prison and the loss of his business. The arrest and punishment have nothing to do with stolen property. There is no incentive for a small business to buy stolen property. Stolen property is recovered by the police with no compensation to the business owner. In over 40 years of business and 30,000 to 40,000 transactions, I have only encountered 8 stolen items. The heavy burden **HB171** places on business owners is not rationally related to a decrease in property crime sought by this Bill.

I respectfully submit this testimony and thank you for your serious consideration to not pass this Bill which unfairly affects our struggling pawn and secondhand dealers' industry that provides a much-needed service to our community. Thank you for always supporting small businesses.

Sincerely,

John Spiker

Kamaaina Loan

LATE

March 31, 2021

Senator Karl Rhoades, Chair
Senator Jarrett Keohokalole, Vice-Chair
And Members of the Senate Committee on Judiciary

FROM: Richard Dan, Kamaaina Loan

Dear Chair Rhoades, Vice-Chair Keohokalole, and Members of the Senate Committee on Judiciary,

SUBJECT: **HB171, HD1, SD1 - RELATING TO PROPERTY CRIMES.**

My name is Richard Dan and I'm testifying in **Strong OPPOSITION to HB171, HD1, SD1**. To reiterate my prior testimony on this bill, don't change anything in our existing law. It's a good law, it works fine, and there's no reason to change. Making changes to the terminology does not change or guarantee anything one iota. Please leave it as is.

I've been a pawnbroker and licensed secondhand dealer in the state of Hawaii for over 40 years. I've served in multiple roles as a Member, Director and Officer of the Hawaii State Pawnbroker Association, the National Pawnbroker Association, and several other related organizations.

Over the decades, I've worked closely with the Maui Police Department, Honolulu Police Department, and other governmental agencies in setting regulatory standards for the protection of my business, my customers, my community, and the victims of crime. To better curb the criminal activity of trying to fence stolen property, it is a social good and in everyone's best interest to have effective laws in place.

HB171, HD1, SD1 proposes what to some, can be a simple insertion, removal, or exchange of words, "**knowingly**", "**intentionally**" and "**recklessly**". The word "**recklessly**" is vague and ambiguous, leading to too much subjectivity to an objective situation, and therefore should be removed from HB171, HD1, SD1.

The idea that pawnbrokers could be liable of imprisonment if they are victimized by a criminal, raises the most serious questions of fairness and decent behavior. I **strongly recommend not removing** the word "**knowingly**" from the existing law.

It is my understanding that the HD1, SD1 revision originates from the Honolulu Police Department and appears, from prior discussion of the bill language, that the only purpose of adding the term "**recklessly**" is to absolve investigators of any responsibility for establishing that in fact a crime has been committed. An important reminder as you consider the crippling of one of the State's essential businesses, is that our governor included pawnshops as essential businesses during this pandemic,

Senator Karl Rhoades, Chair
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because in Hawaii 30% of citizens are un-banked and do not have a conventional bank account. When they need financial support, they often turn to a trusted pawn lender for financial assistance. Probably most second-hand transactions today are not conducted by licensed agents, so the HB171, HD1, SD1 attack on pawnbrokers is misguided at best.

Many of Kamaaina Loan's clients are well-known to us. In establishing a customer relationship, significant personal information is required, including a thumbprint, a driver's license, seller's signature and photo, telephone number and a local address. Customers are required to affirm in writing that they are the legitimate owners of the merchandise being pawned or sold.

If someone should be so bold as to try to pass off stolen goods, it is comparatively simple for the police to track them with the information we provide electronically (including video of transactions).

Contrast this with transactions in stolen goods mediated over social media, which is certainly now the most usual method of fencing just about anything. The sponsors of this bill seem not to have offered any statistics to back up their assertions about stolen property and pawnshops.

Consider in the realm of reckless behavior which is more reckless: my long-established, well-known business with its detailed procedures for establishing legitimacy; or some unlicensed person meeting some unknown person in a parking lot after hooking up on the internet.

It seems to me that the way this bill is written simply defines my business as reckless without any attention being paid to whether it is operated in a serious and legitimate manner with detailed and accessible records available to the authorities. There are good reasons why the police are required to meet minimum standards in conducting investigations.

These are just a few comments leading to my **opposition** of this bill. If I can be of assistance in crafting more equitable, accountable, and safe legislation as it relates to the matter of pawnbroking and secondhand dealing in Hawaii, please contact me at Tel: (808) 242-5555.

Sincerely,
Richard Dan
Richard Dan, Manager
Kamaaina Loan