

DEPARTMENT OF THE PROSECUTING ATTORNEY
CITY AND COUNTY OF HONOLULU

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THE HONORABLE MARK M. NAKASHIMA, CHAIR
HOUSE COMMITTEE ON JUDICIARY AND HAWAIIAN AFFAIRS
Thirty-First State Legislature
Regular Session of 2021
State of Hawai`i

February 23, 2021

RE: H.B. 181, H.D. 1; RELATING TO THE DEFINITION OF PROPERTY.

Chair Nakashima, Vice Chair Matayoshi, and members of the House Committee on Judiciary and Hawaiian Affairs, the Department of the Prosecuting Attorney of the City and County of Honolulu ("Department") submits the following testimony in strong support of H.B. 181, H.D. 1. This bill is part of the Department's 2021 legislative package.

The purpose of H.B. 181, H.D. 1, is to update the definition of the term "property" to include various forms of intangible property, such as property that is stored in an electronic format.

The Hawaii Penal Code's definition of the term "property" has not been amended since the Hawaii Penal Code was first enacted in 1972. Thus, as currently written, the definition of "property" does not include intangible property that is stored in electronic format, such as property that is stored on a computer hard drive or other storage media.

H.B. 181, H.D. 1, will update the definition of "property" to include intangible property that may be stored in an electronic format. As amended, the term "property" will mean:

"any money, personal property, real property, thing in action, evidence of debt or contract, or article of value of any kind, and includes property that is stored in an electronic medium and is retrievable in a perceivable form. Commodities of a public utility nature such as gas, electricity, steam, and water constitute property, but the supplying of such a commodity to premises from an outside source by means of wires, pipes, conduits, or other equipment shall be deemed a rendition of a service rather than a sale or delivery of property". (New language underscored.)

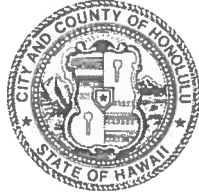
The definition of the term "property" needs to be updated to address the problem of theft of intellectual property and property that is stored in electronic format. Currently, criminal cases that involve theft of intangible property stored in electronic format are being declined. The reason: Data stored in electronic format does not qualify as "property". The Honolulu Prosecutor's Office

recently declined prosecution of a theft case involving a client list that was valued at over \$300,000, because the client list was stored in electronic format, and therefore, outside the scope of the current definition of “property”. H.B. 181, H.D. 1, will provide needed protection for those who maintain property in electronic format. Property maintained in electronic format can have significant value, and that property should be protected to the same extent as property maintained in other formats.

For these reasons, the Department of the Prosecuting Attorney strongly supports the passage of H.B. 181, H.D. 1. Thank you for this opportunity to testify.

POLICE DEPARTMENT
CITY AND COUNTY OF HONOLULU

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OUR REFERENCE MK-KK

February 23, 2021

The Honorable Mark M. Nakashima, Chair
and Members
Committee on Judiciary
and Hawaiian Affairs
House of Representatives
Hawaii State Capitol
415 South Beretania Street, Room 325
Honolulu, Hawaii 96813

Dear Chair Nakashima and Members:

SUBJECT: House Bill No. 181, H.D. 1, Relating to the Definition of Property

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

The HPD supports House Bill No. 181, H.D. 1, Relating to the Definition of Property.

In working with the Department of the Prosecuting Attorney, the HPD supports the current draft to include property that is stored in an electronic medium and is retrievable in perceivable form to the definition of "property." The update to the definition will help law enforcement identify various forms of intangible property and data stored in an electronic format as "property" and a theft of that property a crime. This will help protect valuable information that is stored electronically.

The HPD urges you to support House Bill No. 181, H.D. 1, Relating to the Definition of Property.

Thank you for the opportunity to testify.

APPROVED:

A handwritten signature in cursive script, reading "Susan Ballard", written over a horizontal line.

Susan Ballard
Chief of Police

Sincerely,

A handwritten signature in cursive script, reading "Mikel Kunishima", written over a horizontal line.

Mikel Kunishima, Captain
Criminal Investigation Division