

**STATE OF HAWAI‘I**  
**OFFICE OF THE PUBLIC DEFENDER**

**Testimony of the Office of the Public Defender,  
State of Hawai‘i to the House Committee on  
Judiciary and Hawaiian Affairs**

April 6, 2021

S.B. 428, SD1:     RELATING TO FELONIES

Chair Nakashima, Vice Chair Matayoshi, and Members of the Committee:

The Office of the Public Defender respectfully opposes S.B. 428, SD1.

While the Office of the Public Defender does agree with the DOT’s concern that all public transportation systems need protection, including a new automated rail system, we have strong concerns about equating “intentional” and “knowing” conduct with that of “reckless” conduct in the language of this bill. Clearly, someone who acts intentionally or knowingly to interfere with the proper operation of a transportation system does so with purpose and the desire to cause such a result. However, one that might be liable for reckless conduct would do so with less malice and culpability, and should not be held to the same standard of punishment. If the purpose of this bill is to criminalize the interference with the operation of a transportation system, and to deter such interference, it should be directed at those contemplating purposeful wrongdoing, and not those that might cause such a malfunction through error or lack of diligence.

For example: young or immature individuals tossing an object around while waiting for a rail car, and recklessly allowing that object to fall onto the rail tracks, causing a breakdown or malfunction should not be subject to the same penalties as someone who intentionally or knowingly causes a similar result. The same would go for those that might drop their grocery bags, canes or other objects that cause an unintended malfunction.

Our suggestions on this matter, would be consistent with current Criminal Property Damage statutes dealing with the different degrees of culpability. Please see HRS sections: 708-820, 708-821 and 708-822.

Thank you for the opportunity to comment on S.B. 428, SD1.

POLICE DEPARTMENT  
CITY AND COUNTY OF HONOLULU

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OUR REFERENCE MK-LS

April 6, 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: Senate Bill No. 428, S.D. 1, Relating to Felonies

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

The HPD supports Senate Bill No. 428, S.D. 1, Relating to Felonies.

In adapting to the changing landscape and different modes of public transportation, the HPD supports this bill because it provides an amendment to Section 711-1112 of the Hawaii Revised Statutes to include the interference with the "operation" of public transit vehicles. Looking to the near future, the addition of "operation" covers the delay, malfunction, or breakdown of an automated public transit vehicle, system, or service. The HPD supports all efforts to ensure the safety and security of everyone on all forms of public transit vehicles.

The HPD urges you to support Senate Bill No. 428, S.D. 1, Relating to Felonies.

Thank you for the opportunity to testify.

APPROVED:

Sincerely,

Handwritten signature of Susan Ballard in cursive script.

Susan Ballard  
Chief of Police

Handwritten signature of Mikel Kunishima in cursive script.

Mikel Kunishima, Captain  
Criminal Investigation Division

DEPARTMENT OF TRANSPORTATION SERVICES  
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TESTIMONY TO THE  
HOUSE COMMITTEE ON JUDICIARY & HAWAIIAN AFFAIRS (JHA)

APRIL 6, 2021

**IN SUPPORT OF  
SB 428, SD1 – RELATING TO FELONIES**

Dear Chair Nakashima, Vice Chair Matayoshi, and Members of the Committee:

The Department of Transportation Services is in support this measure; it is part of the City and County of Honolulu's 2021 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 428, SD1 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.

Without SB 428, SD1, the interference with the automated operation of a public transit vehicle, not otherwise specified in State law, may be charged as criminal tampering in the first degree pursuant to Section 708-826, Hawaii Revised Statutes. This is a misdemeanor. The heightened danger to the public, including risk of bodily harm to passengers, when there is interference with automated operations justify the class C felony classification.

Thank you for consideration of this measure and for the opportunity to provide this testimony.