



**WRITTEN TESTIMONY OF
THE DEPARTMENT OF THE ATTORNEY GENERAL
THIRTY- FIRST LEGISLATURE, 2021**

ON THE FOLLOWING MEASURE:

S.B. NO. 428 RELATING TO FELONIES.

BEFORE THE:

SENATE COMMITTEE ON TRANSPORTATION

DATE: Tuesday, February 9, 2021 **TIME:** 3:05 p.m.

LOCATION: State Capitol, Via Videoconference

TESTIFIER(S): **WRITTEN TESTIMONY ONLY.**

(For more information, contact David L. Williams or Lance Goto,
Deputy Attorneys General, at 586-1160)

Chair Lee and Members of the Committee:

The Department of the Attorney General (Department) submits the following comments:

The purpose of this bill is to add the offense of interference with the operation of a public transit vehicle as a class C felony to section 711-1112, Hawaii Revised Statutes (HRS). A person would commit the offense of interference with the operation of a public transit vehicle by "[i]ntentionally, knowingly, or recklessly causing the delay, malfunction, or breakdown of an automated operation of a public transit vehicle, system, or service." (page 1, line 3 through page 2, line 4)

For consistency with the purpose and the proposed amended title of section 711-1112, the Department recommends amending subsection (1), on page 1, lines 4-5, to read as follows: "A person commits the offense of interference with the operator or operation of a public transit vehicle if the person interferes with the operation of a"

Section 711-1112 includes a definition of "public transit vehicle." (page 2 lines 5-10). The Department recommends also including a definition of "automated operation" in the section as explained below.

On page 2, lines 1-4, proposed paragraph (c) currently reads: "Intentionally, knowingly, or recklessly causing the delay, malfunction, or breakdown of an automated operation of a public transit vehicle, system, or service." Without a definition of "automated operation", it may not be clear what conduct is prohibited, regardless of

whether the person's conduct is done with intentional, knowing, or reckless states of mind. See State v. Beltran, 116 Hawai'i. 146, 151, 172 P.3d 458, 463 (2007) (a penal statute is vague if it does not define a criminal offense with sufficient definiteness so that ordinary people can understand what conduct is prohibited and in a manner that does not encourage arbitrary and discriminatory enforcement). Also, there does not appear to be another definition elsewhere in the statutes that could be used to construe what is meant by "automated operation". See State v. Kamana'o, 118 Hawai'i 210, 218, 188 P.3d 724, 832 (2008) (laws in pari materia, or upon the same subject matter, shall be construed with reference to each other; what is clear in one statute may be called upon in aid to explain what is doubtful in another). To resolve this issue, we recommend the addition of a definition of "automated operation."

The Department appreciates the opportunity to provide comments on this measure.

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 Transportation**

February 9, 2021

S.B. No. 428: RELATING TO FELONIES

Chair Lee, Vice Chair Inouye, and Members of the Committee:

The Office of the Public Defender respectfully opposes S.B. No. 428.

We have serious concerns that 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 is too broad; as it does not provide any warning or notice to any citizen to determine what conduct is prohibited. 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, arrests and litigation.

A passenger who simply holds open the door or prevents the door from 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 as to whether one should exit the rail car. Parents 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. While this procedure may make sense given the public safety concerns caused by the other subsections of this statute, this bill would transform a statute focused on crimes against persons, namely – transit operators, to encompass crimes involving inanimate objects. Causing a delay is fundamentally different than causing or threatening bodily injury to a transit operator. The legislative commentary to the original law makes clear that the statute was necessitated due to “increased danger to the public involved when the operators are terrorized or assaulted.” As a result, the proposed addition to the statute would create unnecessarily harsh penalties given the relative public safety concerns.

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 or immature individuals tossing an object around while waiting for a rail, and recklessly causing the object to fall onto the rail tracks, and causing a breakdown or malfunction should not be 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. 428.

DAVID Y. IGE
GOVERNOR



LATE

TESTIMONY BY:

JADE T. BUTAY
DIRECTOR

Deputy Directors
LYNN A.S. ARAKI-REGAN
DEREK J. CHOW
ROSS M. HIGASHI
EDWIN H. SNIFFEN

STATE OF HAWAII
DEPARTMENT OF TRANSPORTATION
869 PUNCHBOWL STREET
HONOLULU, HAWAII 96813-5097

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S.B. 428
RELATING TO FELONIES

Senate Committee on Transportation

The Department of Transportation (DOT) **supports the intent** of this bill which is aimed to improve safety by specifying that interference with the operator or operation of any transit vehicle owned or operated by a government entity is unlawful and is a Class C felony.

Thank you for the opportunity to provide testimony.

DEPARTMENT OF TRANSPORTATION SERVICES
CITY AND COUNTY OF HONOLULU

650 SOUTH KING STREET, 3RD FLOOR
HONOLULU, HAWAII 96813
Phone: (808) 768-8305 • Fax: (808) 768-4730 • Internet: www.honolulu.gov

RICK BLANGIARDI
MAYOR



J. ROGER MORTON
DIRECTOR DESIGNATE

JON Y. NOUCHI
DEPUTY DIRECTOR

TESTIMONY TO THE
SENATE COMMITTEE ON TRANSPORTATION (TRS)

FEBRUARY 9, 2021

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

Dear Chair Lee, Vice Chair Inouye, and Members of the Committee:

The Department of Transportation Services is in strong 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 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.