

STAND. COM. REP. NO. 3408

Honolulu, Hawaii

MAR 24 2022

RE: H.B. No. 1469
H.D. 1
S.D. 1

Honorable Ronald D. Kouchi
President of the Senate
Thirty-First State Legislature
Regular Session of 2022
State of Hawaii

Sir:

Your Committee on Judiciary, to which was referred H.B. No. 1469, H.D. 1, entitled:

"A BILL FOR AN ACT RELATING TO UNAUTHORIZED CONTROL OF A PROPELLED VEHICLE,"

begs leave to report as follows:

The purpose and intent of this measure is to create an affirmative defense for anyone charged with unauthorized control of a propelled vehicle, where the defendant purchased the vehicle in good faith and believed themselves to be the actual owner of the vehicle.

Your Committee received testimony in support of this measure from the Department of the Prosecuting Attorney of the City and County of Honolulu and Honolulu Police Department. Your Committee received testimony in opposition to this measure from the Office of the Public Defender.

Your Committee finds that an affirmative defense is defined, in section 701-115(b), Hawaii Revised Statutes, as a defense where the defendant is entitled to an acquittal if the trier of fact finds that the evidence, when considered in the light of any contrary prosecution evidence, proves, by a preponderance of the evidence, that the specified fact or facts negate penal liability. Often, in cases involving unauthorized control of a propelled



vehicle in the second degree, the prosecution is blindsided at trial when a defendant makes an inference during questioning of a witness, or personally testifies, that the defendant purchased the vehicle. When this occurs, the trial has already commenced, and the prosecution is learning of this defense for the first time. At that point, the prosecution and police are unable to investigate these claims mid-trial, jeopardy has already been attached, and jurors are potentially left to question whether the State has in fact proven the case beyond a reasonable doubt. This measure codifies an affirmative defense for these types of cases, which will still require the prosecution to prove their case beyond a reasonable doubt, but also will put the burden on the defendant to prove the particular defense by a preponderance of the evidence.

Your Committee has amended this measure by:

- (1) Removing language that required the defendant to have purchased the vehicle in good faith;
- (2) Requiring the defendant to have the reasonable belief that they were the actual owner of the vehicle; and
- (3) Making technical, nonsubstantive amendments for the purposes of clarity and consistency.

As affirmed by the record of votes of the members of your Committee on Judiciary that is attached to this report, your Committee is in accord with the intent and purpose of H.B. No. 1469, H.D. 1, as amended herein, and recommends that it pass Second Reading in the form attached hereto as H.B. No. 1469, H.D. 1, S.D. 1, and be placed on the calendar for Third Reading.

Respectfully submitted on
behalf of the members of the
Committee on Judiciary,



KARL RHOADS, Chair



