

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**

February 1, 2022

H.B. No. 1469: RELATING TO UNAUTHORIZED CONTROL OF PROPELLED
VEHICLE

Chair Mark M. Nakashima, Vice Chair Scot Z. Matayoshi, and Members of the Committee:

The Office of the Public Defender respectfully opposes H.B. No. 1469, which would amend HRS § 708-836 and 708-836.1 to add the following language to subsection (2) and thus adding another affirmative defense to the charge of Unauthorized Control of Propelled Vehicle (UCPV):

- (c) Purchased the vehicle in good faith, and believed themselves to be the actual owner of the vehicle.

The proponents of this bill seek to remove a valid defense in the law for the offense of UCPV and shift the burden of proof from the prosecution to the defense. In other words, this bill requires that a person accused of UCPV, who believes themselves to be the owner of a vehicle, prove, by a preponderance of the evidence, that they believe they are the owner because they made a good faith purchase of the vehicle, instead of requiring the government to prove beyond a reasonable doubt that they are not the owner.

Currently, if a person purchased a vehicle in good faith and believed themselves to be the actual owner, but were accused of the offense of UCPV, they could rely on the defense of ignorance or mistake under HRS section 702-218. However, this bill would require that the accused person prove, at a jury trial, by a preponderance of the evidence, that they purchased the vehicle in good faith and believed themselves to be the owner, instead of relying on HRS section 702-218 as a defense, and in some circumstances even prevent being charged with UCPV.

Moreover, the practical effect of the passage of this bill would result in more jury trials for UCPV cases, as people in this circumstance would be required to prove, at

a trial, that they made a good faith purchase. Therefore, this bill would criminalize those that did make a good faith purchase of a vehicle, but perhaps were duped into believing that they made a legal purchase, thus turning victims into criminal defendants, and perhaps even convicted felons if they no longer have the ability to prove, by a preponderance of the evidence, that they made a good faith purchase. HRS 702-218 would be made moot in UCPV cases and would result in the need to litigate all cases dealing with good faith purchases. Furthermore, the term “good faith” is not defined in this measure, and thus it would be subjected to broad interpretation in a criminal trial. The question of what constitutes a “good faith” purchase would be a factual question for a juror to determine without proper guidance in the law, and would thus result in questionable verdicts, as jurors would be left to use their own value system to determine what is “good faith.”

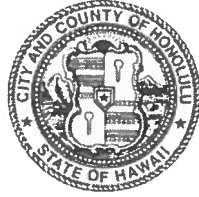
Let us understand that it is the prosecution’s burden to prove a criminal allegation beyond a reasonable doubt. In a UCPV case, it is fundamental for the prosecution to prove that the person in control of any vehicle is not so authorized. It is the government that has access to all records of legal ownership related to vehicles, and since it is the entity making the criminal allegation, it should be required to prove the elements of said case.

Shifting the burden to the defendant in a criminal case is contrary to the basic principles of due process. The United States Supreme Court in In Winship, 397 U.S. 358, 364, held, “Due Process Clause protects the accused against conviction except upon *proof beyond a reasonable doubt of every fact necessary* to constitute the crime with which he is charged.” (Emphasis added). The Court posited two purposes of the reasonable doubt standard to support its holding. Id. at 363-64. First, the reasonable doubt standard is a “prime instrument for reducing the risk of convictions resting on factual error” since the standard “provides concrete substance for the presumption of innocence.” Id. at 363. The standard is necessary because the defendant in a criminal case “has at stake interests of immense importance, both because of the possibility that he may lose his liberty upon conviction and because of the certainty that he would be stigmatized by the conviction.” Id. Second, the reasonable doubt standard is “indispensable to command the respect and confidence of the community in applications of the criminal law.” Id. at 364. The reasonable doubt standard instills confidence in the community that the criminal justice system will not convict innocent people.

Thank you for the opportunity to comment on this measure.

POLICE DEPARTMENT
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OUR REFERENCE

JH-KK

February 1, 2022

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

Dear Chair Nakashima and Members:

SUBJECT: House Bill No. 1469, Relating to Unauthorized Control of a Propelled Vehicle

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

The HPD supports House Bill No. 1469, Relating to Unauthorized Control of a Propelled Vehicle.

There are several past instances of stolen vehicles operated by innocent individuals who purchased these vehicles in good faith from a company or another individual not knowing it was stolen. Typically, the innocent individual was stopped by law enforcement and arrested, not realizing that the vehicle was stolen. The amendment to this law will give an affirmative defense to the innocent individuals to avoid further prosecution.

The HPD urges you to support House Bill No. 1469, Relating to Unauthorized Control of a Propelled Vehicle.

Thank you for the opportunity to testify.

APPROVED:

Sincerely,

Handwritten signature of Rade K. Vanic in black ink.

Rade K. Vanic
Interim Chief of Police

Handwritten signature of Jarod Y. Hiramoto in black ink.

Jarod Y. Hiramoto, Captain
Criminal Investigation Division

DEPARTMENT OF THE PROSECUTING ATTORNEY
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THE HONORABLE MARK M. NAKASHIMA, CHAIR
HOUSE COMMITTEE ON JUDICIARY AND HAWAIIAN AFFAIRS
Thirty-First State Legislature
Regular Session of 2022
State of Hawai'i

February 1, 2022

RE: H.B. 1469; RELATING TO UNAUTHORIZED CONTROL OF A PROPELLED VEHICLE.

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. 1469. This bill is part of the Department's 2022 legislative package, and we thank you for hearing it.

In 2020, Hawaii was ranked as having one of the highest auto theft rates in the nation, per 100,000 people.¹ On Oahu alone, there were approximately 3,000 motor vehicle thefts per year, with approximately 500-600 individuals arrested for UCPV each year.² The purpose of H.B. 1469 is to add a new affirmative defense to the charge of Unauthorized Control of a Propelled Vehicle ("UCPV"), if a defendant purchased the vehicle in good faith and believed him or herself to be the rightful owner.

An affirmative defense is defined, in section 701-115(b) of the Hawaii Revised Statutes ("HRS"), 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--the specified fact or facts which negative penal liability. H.B. 1469 proposes to create an affirmative defense as it relates specifically to HRS §708-836,

¹ Available online at <https://www.statista.com/statistics/232588/motor-vehicle-theft-rate-in-the-us-by-state/>; last accessed January 30, 2022.

² Available online at https://www.capitol.hawaii.gov/Session2021/Testimony/HB172_TESTIMONY_JHA_02-23-21_.PDF at pg. 5; last accessed January 30, 2022.

Unauthorized Control of a Propelled Vehicle in the First Degree, and HRS §708-836.1, Unauthorized Control of a Propelled Vehicle in the Second Degree. Often, in these types of cases, the prosecution is blindsided at trial when the defendant makes an inference during questioning of a witness, or personally testifies, that he or she purchased the vehicle. When this occurs, the trial has already commenced as 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 attached, and jurors are potentially left questioning whether the state has in fact proven their case beyond a reasonable doubt (due to the seemingly incomplete investigation). Even with the affirmative defense created in H.B. 1469, the prosecution would still be held to the same standard of proving their case beyond a reasonable doubt; however, it would also put the burden on the defendant to prove this particular defense (about buying the vehicle from someone) by a preponderance of the evidence.

Rather than merely pursuing “convictions,” the Department strongly believes that its highest duty is to protect public safety through just prosecution of offenders. Therefore, if in fact a defendant did purchase the vehicle beforehand, that information would be invaluable to a prosecutor, to investigate properly and ensure that a defendant is not wrongfully prosecuted. For these reasons, the Department of the Prosecuting Attorney strongly supports the passage of H.B. 1469. Thank you for this opportunity to testify.