

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 23, 2022

H.B. No. 1486 HD1: RELATING TO THEFT

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

The Office of the Public Defender respectfully opposes H.B. No. 1486 HD1 (hereinafter “H.B. 1486”) which would amend HRS § 708-830.5 to add theft of a motor vehicle as defined under section 291C-1 of the Hawai‘i Revised Statutes to the crime of Theft in the First Degree. The bill also adds “motorcycles” and “mopeds” to be included in the amended theft statute. As it currently stands, motor vehicle and motorcycle theft are prosecuted as class C felonies punishable by up to five years in prison and/or a \$10,000 fine. Moped theft can be prosecuted as a class C felony or a misdemeanor offense, depending on its value. This proposed bill would make *all* motor vehicle, motorcycle, and moped thefts class B felonies, punishable by up to ten years in prison and/or a \$25,000 fine.

We want to stress that this bill will have no effect on deterring theft. The idea that the existence of a particular criminal offense serves as a deterrent to criminal activity has long been rejected. Those who engage in criminal conduct do not stop to weigh the judicial consequences of their actions. Moreover, adding auto, motorcycle, and moped theft to the First Degree Theft statute is duplicative as there are many laws in place that can prosecute these crimes¹. Furthermore, creating class B felony offenses for every theft involving a car, motorcycle, or moped will lead to overly harsh penalties and unnecessarily lengthy prison terms in many cases.

This is especially troubling in the case of moped theft being elevated to a class B felony. Mopeds, similar to many other types of personal property, vary greatly in value. For instance, a used moped may have a value of less than \$750, whereas a new moped can be valued in the thousands of dollars. The current structure of the theft statutes would account for such differences as the penalties for theft offenses are dependent upon the value of the items stolen. We believe this is the appropriate and proper method for the classification of property crimes. This proposed bill,

however, stands to make what is currently misdemeanor conduct – for mopeds valued under \$750.00 – a class B felony offense.

If the legislature is inclined to pass this amendment, it needs to consider that our prisons will quickly become more overcrowded and the burden on our already limited social services will grow exponentially. Our jails and prisons are filled above not only design capacity but also operational capacity. A significant portion of the State’s prison population are incarcerated in a contracted private, for-profit prison in Arizona; they are exiled thousands of miles away from their families, friends, and crucial support networks. According to a recent study by the Prison Policy Initiative, in 2018, Hawai‘i had an incarceration rate of 487 per 100,000 people.¹ Although Hawai‘i ranked 37th among the 50 states, if every state was an independent nation, Hawai‘i would have the 43rd highest incarceration rate in the world.² Only three foreign countries have a higher incarceration rate than Hawai‘i.³ Thus, Hawai‘i locks up a higher percentage of its people than many wealthy democracies do.⁴ With the recent nationwide review of criminal justice policies, it is concerning that the trend in the State of Hawai‘i is to increase penalties.

In conclusion, the proposed bill does nothing to deter motor vehicle, motorcycle, and moped theft since it is a purely a punitive measure. As noted above, our penal code is adequately structured to cover a multitude of motor vehicle theft-related scenarios. What this bill will have an effect on doing is exacerbating our already overcrowded jail facilities and further clog our judicial system.

Thank you for the opportunity to comment on this measure.

¹ See HRS §§ 708-836 (Unauthorized Control of Propelled Vehicle in the First Degree; 708-836.5 (Unauthorized Entry into Motor Vehicle in the First Degree); 708-840 Robbery in the First Degree; and 708-841 Robbery in the Second Degree.

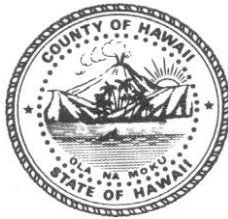
² Prison Policy Initiative, “States of Incarceration: The Global Context.” See <https://www.prisonpolicy.org/global/2018.html>

³ Id.

⁴ Prison Policy Initiative, “Hawaii profile.” See <https://www.prisonpolicy.org/profiles/HI.html>

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OFFICE OF THE PROSECUTING ATTORNEY

TESTIMONY IN SUPPORT OF HOUSE BILL 1486 HD1

**A BILL FOR AN ACT RELATING
TO THEFT IN THE FIRST DEGREE; MOTOR VEHICLES**

**COMMITTEE ON
JUDICIARY & HAWAIIAN AFFAIRS**
Representative Mark M. Nakashima, Chair
Representative Scot Z. Matayoshi, Vice Chair

Wednesday, February 23, 2022 at 2:00 p.m.
Via Videoconference
State Capitol Conference Room 329
415 South Beretania Street

Honorable Chair Nakashima, Vice-Chair Matayoshi and Members of the Committee on Judiciary & Hawaiian Affairs. The County of Hawai'i, Office of the Prosecuting Attorney submits the following testimony in strong support of House Bill 1486 HD1.

This bill was drafted to establish Theft of a Motor Vehicle as a subsection of Theft in the First Degree. Currently, most motor vehicles and/or motorcycle thefts are prosecuted as Theft in the Second Degree and/or Unauthorized Control of Propelled Vehicle in the First Degree, both of which are only class C felony offenses and punishable by a maximum 5 year prison sentence. Instead, this bill will establish Theft of Motor Vehicles, Motorcycles, and Mopeds as a subsection of Theft in the First Degree, which is a class B felony offense and punishable by a maximum 10 year prison sentence.

Hawai'i Island is composed of rural communities, with limited mass public transit accommodations to service the needs of our residents. As a result, many rely heavily upon their own personal vehicles for their daily transportation, livelihoods, and to support their families. In addition, victims of vehicle theft often times endure both financial hardships and emotional trauma as a result of the crime. In addition, these motor vehicles often times contain personal property including but not limited to work related tool and trade equipment, child safety equipment (car seats, strollers, etc.), money, mobile electronic devices, and confidential and personal information, which may subject the victim to additional crimes and/or vulnerability.

Over the past year, our Office has met with community groups, local government leaders, law enforcement officials, and members of the public about their concerns and interests regarding the criminal justice system. Given recent crime trends and in consideration of the criminal matters that are handled by our Office, we collected data through an online survey in hopes of addressing our community's concerns and prioritizing the safety and well-being of

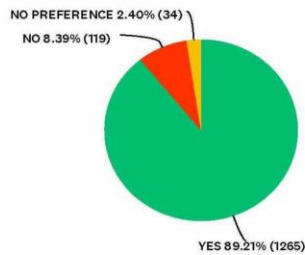
Hawai'i Island residents. A total of 1,422 individuals participated in our online legislative initiatives survey, which ran from December 9, 2021 through December 30, 2021. Of those 1,422 participants, 1,265 or 89.21% of those surveyed, supported establishing Theft of a Motor Vehicle as a class B felony offense. Please see the graph below for more information.



OFFICE OF THE PROSECUTING ATTORNEY LEGISLATIVE INITIATIVES SURVEY

Q2 Do you support creation of a grand theft auto offense (Theft of a Motor Vehicle or Motorcycle) which increases the maximum penalty from a five (5) year prison term to a ten (10) year prison term?

Answered: 1,418 Skipped: 4



ANSWER CHOICES	RESPONSES
YES	89.21% 1,265
NO	8.39% 119
NO PREFERENCE	2.40% 34
TOTAL	1,418

BACKGROUND

Currently most car thefts are prosecuted under the offenses of Unauthorized Control of a Propelled Vehicle in the First Degree (operating a vehicle or changing the vehicle's identity without the owner's consent) and Theft in the Second Degree (theft of property which exceeds \$750 in value), both of which are only class C felony offenses, and carry a maximum penalty of five (5) years in prison. In order to prosecute a felony theft as a class B felony, the stolen property in question (a motor vehicle or motorcycle) would have to be valued at an amount greater than \$20,000.

Under HRS 708-830.5, Theft in the First Degree is a class B felony offense and carries a maximum penalty of ten (10) years in prison.

PROSECUTORS PROPOSAL

The Office of the Prosecuting Attorney proposes establishing "Theft of a Motor Vehicle and/or Motorcycle" as a subsection of Theft in the First Degree to eliminate the need to provide an estimated value of a vehicle or motorcycle in order to prosecute a class B felony theft. Furthermore, by increasing the maximum penalty, we promote respect for the law, ensure that offenders receive an appropriate sentence that reflects the seriousness of the offense, provide adequate deterrence for future criminal activity, and protect the public.

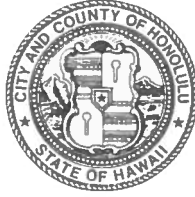


The County of Hawai'i, Office of the Prosecuting Attorney remains committed to the pursuit of justice with integrity and commitment.

For the foregoing reasons, the, County of Hawai'i, Office of the Prosecuting Attorney strongly supports the passage of House Bill No. 1486 HD1. Thank you for the opportunity to testify on this matter.

POLICE DEPARTMENT
CITY AND COUNTY OF HONOLULU

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RICK BLANGIARDI
MAYOR

RADE K. VANIC
INTERIM CHIEF

OUR REFERENCE JH-KK

February 23, 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, Room 325
Honolulu, Hawaii 96813

Dear Chair Nakashima and Members:

SUBJECT: House Bill No. 1486, H.D. 1, Relating to Theft

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. 1486, H.D. 1, Relating to Theft.


Currently, when a suspect is arrested for a stolen vehicle, they are charged with Section 708-836, Unauthorized Control of a Propelled Vehicle in the First Degree, of the Hawaii Revised Statutes (HRS) or Section 708-836.1, Unauthorized Control of a Propelled Vehicle in the Second Degree, HRS. However, the suspect has to have control of the vehicle to be charged with these violations. Simply being in possession of or having access to the stolen vehicle is insufficient to sustain a charge of theft of a vehicle. Amending the offense of Theft in the First Degree to include the theft of a motor vehicle will enhance law enforcement's capabilities to arrest and charge a suspect for this violation.

The HPD urges you to support House Bill No. 1486, H.D. 1, Relating to Theft, and thanks you for the opportunity to testify.

APPROVED:

Sincerely,


Rade K. Vanic
Interim Chief of Police


Jarod Y. Hiramoto, Captain
Criminal Investigation Division

HB-1486-HD-1

Submitted on: 2/21/2022 9:31:26 PM

Testimony for JHA on 2/23/2022 2:00:00 PM

Submitted By	Organization	Testifier Position	Remote Testimony Requested
Jodie Van Cleave	Individual	Support	No

Comments:

This bill is one step closer to holding auto thieves accountable for their actions. The reason why there are auto thefts that happen every single day is because the current consequences are so minor. It's a slap on the wrist and they're out doing it again. I personally know multiple people who have had their vehicles stolen. People in the community are tired of being the victims of auto theft or knowing friends and family who are victims of auto theft. Many people who have their vehicles stolen are hard working people who are just trying to get by and it's frustrating to see these criminals getting away without any consequences. I support HB1486.

HB-1486-HD-1

Submitted on: 2/22/2022 9:30:54 AM

Testimony for JHA on 2/23/2022 2:00:00 PM

Submitted By	Organization	Testifier Position	Remote Testimony Requested
P Hauoli'ipo Wright	Individual	Support	No

Comments:

A vehicle represents the livelihood for so many in the community, when it's stolen from you that equates to stealing my job or my health. I agree with this motion to amend 291C-1 to include motor vehicles, motorcycles or mopeds as a theft in the first degree.

HB-1486-HD-1

Submitted on: 2/22/2022 12:50:26 PM

Testimony for JHA on 2/23/2022 2:00:00 PM

Submitted By	Organization	Testifier Position	Remote Testimony Requested
Barbara Cigainero	Individual	Support	No

Comments:

Dear Committee Chair and Members: Thank you for the opportunity to testify in support of HB 1486. I live in the Puna Region of the Big Island of Hawaii. We have a very high incidence of vehicle theft. The individuals (or gangs) that are committing this theft seem to feel that they can operate with complete impunity. After the cars are stolen, they are frequently stripped for parts and then left along the side of the roads in subdivisions and set on fire. We need to support our police departments and to make the theft of vehicles a more serious offense.

Mahalo for your consideration. Barbara Cigainero, Keaau, HI 96749

HB-1486-HD-1

Submitted on: 2/22/2022 1:38:04 PM

Testimony for JHA on 2/23/2022 2:00:00 PM

Submitted By	Organization	Testifier Position	Remote Testimony Requested
Julia Lindbergh	Individual	Support	No

Comments:

I am in favor of HB 1486. Julia Lindbergh

HB-1486-HD-1

Submitted on: 2/22/2022 1:49:53 PM

Testimony for JHA on 2/23/2022 2:00:00 PM

Submitted By	Organization	Testifier Position	Remote Testimony Requested
Allen Bartolome	Individual	Support	No

Comments:

I support the passing of this bill

LATE

HB-1486-HD-1

Submitted on: 2/22/2022 7:43:55 PM

Testimony for JHA on 2/23/2022 2:00:00 PM

Submitted By	Organization	Testifier Position	Remote Testimony Requested
Lois Brown	Individual	Support	No

Comments:

I support this bill. We need harsher penalties for car thieves, who disrupt the lives of many, by stealing their cars. It's time that we help protect the VICTIMS of crime and stop coddling CRIMINALS.

Thank you for your time.

LATE

I had an incident way back last year. I think it had to do with my neighbors and a locksmith. He made duplicate key for me. I contacted his wife to get the extra key, but I think that the locksmith gave away the key because the wife said he didn't have another key. Someone stole out of my car jewelry, wedding ring, a camera. They didn't steal the car, but they stole everything out of the car.

Her neighbor, also had a car stolen that lived here last year, their daughter was expecting a baby and when they went to the hospital for the baby, he left his wallet and possessions in the car and his vehicle was stolen from the Hilo Hospital. He found the car, approached the people, and was told if he goes back for the car, they will shoot him. He never got his car back. They were into drugs.

Another incident, a neighbor had a car stolen in the middle of daytime. They saw the car drive away in full speed. Then her neighbor came down asking if they had seen the car, she said yes, and the neighbor told her that they stole his car and it was the second car they had stolen from him.

She has a vehicle that she needs to get towed away that is n her yard and people have been stealing parts from this vehicle. The theft is still going on. They just come on the property and steal what ever they want.

LATE

HB-1486-HD-1

Submitted on: 2/23/2022 11:28:00 AM

Testimony for JHA on 2/23/2022 2:00:00 PM

Submitted By	Organization	Testifier Position	Remote Testimony Requested
Cyd L. Hoffeld	Individual	Support	No

Comments:

Aloha Chair Nakashima, Vice Chair Matayoshi, and Members of the Committee on Judiciary and Hawaiian Affairs,

My name is Cyd Hoffeld and I live in Kalapana on Hawaii Island where motor vehicle, motorcycle, and moped thefts are rampant. I **strongly support HB1486 HD1** because it would amend the offense of theft for the items listed above to first degree which will deter this kind of crime spree from happening...at least not as often as it does.

My brother-in-law had his moped stolen right out of his garage and there are so many more residents who post on social media that their cars, trucks, and motorcycles have also been stolen in similar ways. I have been told that there are 20% of people committing 80% of these kinds of crimes.

Hopefully, **HB1486 HD1** will punish them enough to make them stop and to keep others from trying to commit similar crimes.

Mahalo!

LATE

HB-1486-HD-1

Submitted on: 2/23/2022 12:08:26 PM

Testimony for JHA on 2/23/2022 2:00:00 PM

Submitted By	Organization	Testifier Position	Remote Testimony Requested
Becky Jones	Individual	Support	No

Comments:

Yes to this bill. Penalties should be commensurate to the hardship suffered by the victims and/or the communiity.

LATE

HB-1486-HD-1

Submitted on: 2/23/2022 12:51:16 PM

Testimony for JHA on 2/23/2022 2:00:00 PM

Submitted By	Organization	Testifier Position	Remote Testimony Requested
Nicole Watts	Individual	Support	No

Comments:

I am in support of HB1486. In Puna, vehicle theft is out of control.