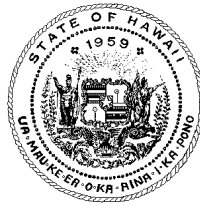


DAVID Y. IGE
GOVERNOR



STATE OF HAWAII
DEPARTMENT OF PUBLIC SAFETY

919 Ala Moana Boulevard, 4th Floor
Honolulu, Hawaii 96814

MAX N. OTANI
DIRECTOR

Maria C. Cook
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Administration

Tommy Johnson
Deputy Director
Corrections

Jordan Lowe
Deputy Director
Law Enforcement

No. _____

TESTIMONY ON HOUSE BILL 150
RELATING TO FELONIES.

By
Max N. Otani, Director

House Committee on Judiciary and Hawaiian Affairs
Representative Mark Nakashima, Chair
Representative Scot Z. Matayoshi, Vice Chair

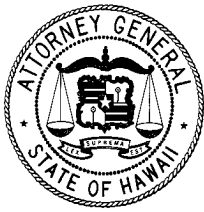
Friday, February 26, 2021; 2:00 p.m.
Via Video Conference

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

The Department of Public Safety (PSD) offers comments on House Bill (HB) 150, which amends Hawaii Revised Statutes Section 711-1112 to include the interference with an automated public transit operation as unlawful and classified as a Class C felony.

PSD recognizes that the safe and efficient operation of the public transit system is essential to the community and is therefore supportive of this measure.

Thank you for the opportunity to provide this testimony.



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

ON THE FOLLOWING MEASURE:

H.B. NO. 150 RELATING TO FELONIES.

BEFORE THE:

HOUSE COMMITTEE ON JUDICIARY AND HAWAIIAN AFFAIRS

DATE: Friday, February 26, 2021 **TIME:** 2:00 p.m.

LOCATION: State Capitol, Room 325, Via Videoconference

TESTIFIER(S): **WRITTEN TESTIMONY ONLY.**
(For more information, contact David L. Williams,
Deputy Attorney General, at 586-1160)

Chair Nakashima and Members of the Committee:

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

The purpose of this bill is to amend section 711-1112, Hawaii Revised Statutes (HRS), the offense of interference with the operator of a public transit vehicle, to include interference with the operation of such a vehicle. A person would commit the offense 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 of this bill and the proposed amended title of section 711-1112, HRS, 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, HRS, 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 House Committee on
Judiciary and Hawaiian Affairs**

February 26, 2021

H.B. No. 150: RELATING TO FELONIES

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

The Office of the Public Defender respectfully opposes H.B. No. 150.

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 lacks precision; it does not provide any standard for a citizen to determine what conduct is forbidden. 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 and arrests.

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 referenced individuals would prevail in 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, and would invite the need to litigate many of these cases.

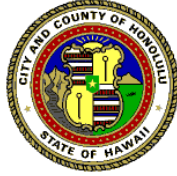
We also oppose the use of the “reckless” state of mind being included in the same passage as an element of this offense. An individual who “intentionally” or “knowingly” (with purpose or certainty) causes a malfunction or breakdown of the operation of an automated public transit vehicle is substantially more culpable than an individual who “recklessly” causes such a malfunction or breakdown. The “reckless” state of mind, means that a person consciously disregards the risk that their action will cause a result, and not that they are acting in a purposeful or knowing manner. Thus, young and immature individuals tossing an object around while waiting for a rail car, and “recklessly” cause the object to fall onto the rail tracks, which results in a breakdown or malfunction should not be subject to the same penalties as someone who “intentionally” or “knowingly” causes such a malfunction.

Thank you for the opportunity to comment on H.B. No. 150.

DEPARTMENT OF TRANSPORTATION SERVICES
CITY AND COUNTY OF HONOLULU

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RICK BLANGIARDI
MAYOR



J. ROGER MORTON
DIRECTOR DESIGNATE

JON Y. NOUCHI
DEPUTY DIRECTOR

TESTIMONY TO THE
HOUSE COMMITTEE ON JUDICIARY & HAWAIIAN AFFAIRS (JHA)

FEBRUARY 26, 2021
2:00 PM

**IN SUPPORT OF
HB 150 – RELATING TO FELONIES**

Chair Nakashima, Vice Chair Matayoshi, 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.

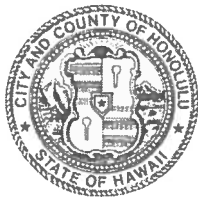
This measure seeks to amend the existing statute that addresses the offense of interference with the operator of a public transit vehicle to also include the interference with the automated operation of a public transit vehicle. HB 1725 allows for interference with an automated operation to be charged 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.

POLICE DEPARTMENT
CITY AND COUNTY OF HONOLULU

801 SOUTH BERETANIA STREET · HONOLULU, HAWAII 96813
TELEPHONE: (808) 529-3111 · INTERNET: www.honolulupd.org



RICK BLANGIARDI
MAYOR

SUSAN BALLARD
CHIEF

JOHN D. McCARTHY
AARON TAKASAKI-YOUNG
DEPUTY CHIEFS

OUR REFERENCE MK-KK

February 26, 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: House Bill No. 150, 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 House Bill No. 150, 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 that includes the interference with the "operation" of the public transit vehicle.


The HPD supports the amendments in the companion bill (Senate Bill No. 428, S.D. 1) in which the word "delay" was removed and the addition of "automated operation" was defined. 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 House Bill No. 150, Relating to Felonies, and thanks you for the opportunity to testify.

APPROVED:

Sincerely,


Susan Ballard
Chief of Police


Mikel Kunishima, Captain
Criminal Investigation Division