



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

ON THE FOLLOWING MEASURE:
S.B. NO. 771, RELATING TO THEFT.

BEFORE THE:

SENATE COMMITTEE ON TRANSPORTATION

DATE: Tuesday, February 16, 2021 **TIME:** 3:00 p.m.

LOCATION: State Capitol, Room 224, Via Videoconference

TESTIFIER(S): Clare E. Connors, Attorney General, or
Albert Cook, Deputy Attorney General

Chair Lee and Members of the Committee:

The Department of the Attorney General (Department) suggests the following amendments to this bill.

The bill would (1) add a new section to part IV of chapter 708, Hawaii Revised Statutes (HRS) to create a criminal offense for theft of a bicycle, making a first offense a misdemeanor and any subsequent offense within five years a class C felony, and (2) exempt the crime from qualifying as a habitual property crime pursuant to section 708-803, HRS.

The Department suggests that the goal of deterring theft of all bicycles would be better achieved by adding theft of a bicycle to Theft in the Second Degree under section 708-831(1), HRS, as follows:

§708-831 Theft in the second degree. (1) A person commits the offense of theft in the second degree if the person commits theft:

- (a) Of property from the person of another;
- (b) Of property or services the value of which exceeds \$750;
- (c) Of an aquacultural product or part thereof from premises that are fenced or enclosed in a manner designed to exclude intruders or there is prominently displayed on the premises a sign or signs sufficient to give notice and reading as follows: "Private Property", "No Trespassing", or a substantially similar message;
- (d) Of agricultural equipment, supplies, or products, or part thereof, the value of which exceeds \$100 but does not exceed \$20,000, or of agricultural products that exceed twenty-five pounds, from

premises that are fenced, enclosed, or secured in a manner designed to exclude intruders or there is prominently displayed on the premises a sign or signs sufficient to give notice and reading as follows: "Private Property", "No Trespassing", or a substantially similar message; or if at the point of entry of the premise, a crop is visible. The sign or signs, containing letters not less than two inches in height, shall be placed along the boundary line of the land in a manner and in such a position as to be clearly noticeable from outside the boundary line. Possession of agricultural products without ownership and movement certificates, when a certificate is required pursuant to chapter 145, is prima facie evidence that the products are or have been stolen; ~~or [-]~~

- (e) Of agricultural commodities that are generally known to be marketed for commercial purposes. Possession of agricultural commodities without ownership and movement certificates, when a certificate is required pursuant to section 145-22, is prima facie evidence that the products are or have been stolen; provided that "agriculture commodities" has the same meaning as in section 145-21[-] ; or
- (f) Of a bicycle.

The Department further suggests moving the definition of "Bicycle" and "Toy bicycle" to the definition section of section 708-800, HRS.

As to the penalty for this crime, the Department suggests that the theft of a bicycle be a class C felony. The bill makes a first offense of theft of a bicycle a misdemeanor, regardless of the value of the bicycle. Thus, theft of a bicycle valued at over \$750, which is currently a class C felony under Theft in the Second Degree, would become a misdemeanor. Making the theft of a bicycle of any value a class C felony would accomplish the purpose of deterring theft of any bicycle.

Lastly, the Department suggests removing the exemption of theft of a bicycle from inclusion in habitual property crime under section 708-803, HRS, because the habitual property crime statute currently includes theft of any kind, including petty misdemeanor shoplifting. To exclude theft of any bicycle from this section would make theft of a bicycle the only theft excluded from punishment as a habitual property crime.

The Department appreciates this opportunity to provide comments.

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 16, 2021

S.B. No. 771: RELATING TO THEFT

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

The Office of the Public Defender respectfully opposes S.B. No. 771, which would establish a separate offense of theft of bicycle.

Current theft statutes adequately cover all forms of theft of personal property including bicycles. The penalties for the theft offenses are dependent upon the value of the items stolen. This is the appropriate and proper method for the classification of property crimes. Bicycles, similar to many other types of personal property, vary greatly in value. For instance, a child’s bicycle may have a value of less than \$50, whereas a triathlete’s specialty bike may be valued in the thousands of dollars. The current structure of the theft statutes would account for such differences.

The proponents of this legislation note in Section 1 at page 2, line 12, that a prime consideration for this legislation is “in order to deter theft of all bicycles”. This legislation would not be a deterrence. Offenders do not stop to consider the judicial consequences of a crime before committing it. If the death penalty was not a deterrence to murder – and countless studies over the years established that it wasn’t – changing the classification of a crime is not going to be a deterrence to those set on committing it.

Rather than deter the commission of bicycle theft, this bill will result in making what is currently misdemeanor conduct – for bicycles valued under \$750.00 – a felony offense for repeat offenders. Elevating the crime to a felony will result in higher numbers of pre-trial detainees and a greater burden on our criminal justice system, including not only the courts and jails but also the probation and parole officers tasked with monitoring convicted felons. Are additional resources going to be financed to deal with this increase?

Moreover, increased penalties (from a maximum of one year jail for theft in the third degree offense to five years for a class C felony) will only continue to exacerbate

the Hawai‘i prison overcrowding problem. 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. This is especially important when dealing with the complicated dynamic of the homeless, who are often the ones arrested or detained for being in possession of a stolen bicycle that are often in poor shape and abandoned (and charged with theft in the third or fourth degree). The courts currently have the ability to incarcerate defendants up to thirty days in jail if the value of the bicycle is under \$250 and up to one year in jail if the value of the bicycle is between \$250 and \$750.

Thank you for the opportunity to comment on this measure.

¹ Prison Policy Initiative, “Hawaii profile.” See <https://www.prisonpolicy.org/profiles/HI.html>

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>

LATE

SB-771

Submitted on: 2/16/2021 11:33:58 AM

Testimony for TRS on 2/16/2021 3:00:00 PM

Submitted By	Organization	Testifier Position	Present at Hearing
Chad Taniguchi	Testifying for Hawaii Bicycling League	Support	No

Comments:

The Hawaii Bicycling League supports SB771 to make the first conviction for bicycle theft a misdemeanor and the second conviction a felony. The purpose is to deter bicycle theft.

For many people, bicycles are their only means of transportation they worked hard to buy. Maybe a kid's first bike or one given to them and precious. Many others save money and maintain health by bicycling. For some bicycling is their life passion.

Some bicycles may cost less, some may cost more. Their importance in society should be recognized and would-be thieves should be warned and deterred. Bicycles can change the world. Bicycles are important to someone's life. Leave them be.

COMMITTEE ON TRANSPORTATION

TUESDAY, 2/16/21, 3 PM, Room No. 224

SB 771 RELATING TO THEFT

Beppie Shapiro, testifying as an individual

I strongly support SB771 which establishes and further defines the crime of theft of a bicycle.

I am not even a bicycle rider but strongly support SB771. I have been closely acquainted with at least 3 young people, two of them students at UH, whose bicycles were stolen at a time in their lives when replacing the stolen bicycle was financially very difficult or out of reach. They, and the first time also I, were shocked to learn that stealing a bicycle was apparently legal in Hawaii.

Bicycle owners in Hawaii are required to register their bikes. Thus a bicycle can be identified both by its registration number, and the serial number stamped on the frame by the manufacturer. If bicycle theft were a crime, it would be more possible for an owner who recognizes their stolen bike when they see it in use by someone else to alert police, who could positively identify the bike by its registration number and/or serial number.

Establishing bicycle theft as a crime would deter some thieves who now know that they face no consequences for an act which, given the prices of bicycles, often has serious consequences for the legal owner.

Please pass SB771.

SB-771

Submitted on: 2/15/2021 2:54:02 PM

Testimony for TRS on 2/16/2021 3:00:00 PM

Submitted By	Organization	Testifier Position	Present at Hearing
Michelle K.	Individual	Support	No

Comments:

I have numerous bicycles stolen from me in the past and think these thieves deserve consequences for their bad action. Please pass this bill into law and consider adding secure bike parking spaces to every neighborhood. Mahalo!