



**WRITTEN TESTIMONY OF  
THE DEPARTMENT OF THE ATTORNEY GENERAL  
KA 'OIHANA O KA LOIO KUHINA  
THIRTY-SECOND LEGISLATURE, 2023**

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**ON THE FOLLOWING MEASURE:**

H.B. NO. 710, H.D. 1, S.D. 1, RELATING TO GOVERNMENT.

**BEFORE THE:**

SENATE COMMITTEE ON JUDICIARY

**DATE:** Wednesday, April 5, 2023

**TIME:** 9:45 a.m.

**LOCATION:** State Capitol, Room 016

**TESTIFIER(S):** **WRITTEN TESTIMONY ONLY.**

(For more information, contact David Van Acker,  
Deputy Attorney General, at (808) 586-1266)

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Chair Rhoads and Members of the Committee:

The Department of the Attorney General supports this bill and provides the following comments.

This bill establishes the felony offense of using or making false statements or entries within the three branches of the State, which mirrors federal criminal statutes. It also disqualifies a person from holding any elected or appointed office in the three branches of the State for a period of ten years from the date of conviction for making false statements or entries. This bill provides state and local law enforcement with much needed tools to combat corruption, fraud, and waste. As the Commission to Improve Standards of Conduct's Final Report recognized, ". . . the State's Penal Code and enforcement agencies do not have sufficient authority to adequately investigate, charge, and sentence instances of corruption and fraud." *The Commission to Improve Standards of Conduct's Final Report* (Dec. 1, 2022), at page 19.

The new proposed section to be added to chapter 710, Hawaii Revised Statutes (HRS), is based on title 18 United States Code section 1001 and criminalizes conduct that is currently punishable at the federal level but not at the state or local level. It would prohibit deceptive practices aimed at frustrating or impeding the legitimate functions of government's executive, legislative, and judiciary branches.

In addition, this bill amends the obstruction of justice offense under section 710-1072.5, HRS, to punish a person that intentionally influences; obstructs; impedes; or endeavors to influence, obstruct, or impede, the due administration of justice by means of force, threat of force, coercion, fraud, or deception. It also increases the punishment for the obstruction of justice offense from a class C felony to a class B felony and removes the possibility of an offender receiving a deferred acceptance of guilty plea.

Finally, the bill amends section 853-4, HRS, to update and clarify the offenses that are eligible for a deferral.

This bill will provide a mechanism to provide law enforcement with a tool to deter and punish public corruption.

Thank you for the opportunity to testify.

**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 Judiciary**

April 5, 2023

H.B. No. 710 HD1 SD1: RELATING TO GOVERNMENT

Chair Rhoads, Vice Chair Gabbard, and Members of the Committee:

The Office of the Public Defender (“OPD”) offers comment on H.B. No. 710 HD1 SD1.

The Office of the Public Defender supports the goals of the Commission to Improve Standards to restore public trust in state government and to increase the level of transparency in its operations and accountability of individuals. The OPD also recognizes that to improve the standard of conduct within government and to more effectively combat fraud, waste, and corruption, it is necessary to establish criminal offenses and penalties, including the offense of obstruction of justice. The OPD, however, opposes the increase of the penalty for the offense of obstruction of justice committed by a witness who refuses to testify after being granted immunity from five years to ten years under HRS § 710-1072.5. The OPD further opposes making defendants charged with obstruction of justice ineligible for a deferred acceptance of guilty plea.

**Obstruction of Justice**

A previous committee amended H.B. No. 710 by including the offense of obstruction of justice under certain conditions. Currently, HRS § 710-1072.5 provides,

- (1) A person commits the offense of obstruction of justice if the person intentionally engages in conduct when called as a witness and having been granted immunity pursuant to chapters 480 and 621C before or after having been qualified as a witness, refuses to testify or be qualified as a witness when duly directed to testify or be qualified as a witness.

HD1 SD1 amends the offense of obstruction of justice by adding another subsection to address public corruption, which is unrelated to the original statute:

- (1) A person commits the offense of obstruction of justice if the person intentionally:
- (a) When called as a witness and having been granted immunity pursuant to chapters 480 and 621C before or after having been qualified as a witness refuses to testify or be qualified as a witness when duly directed to testify or be qualified as a witness; or
  - (b) Influences; obstructs; impedes; or endeavors to influence, obstruct, or impede, the due administration of justice by means of force, threat of force, coercion, fraud, or deception.

By establishing a new criminal offense to combat public corruption under HRS § 710-1072.5 and designating the new offense as a Class B felony, the previous committee not only increased the penalty but also made the original offense of obstruction of justice ineligible for a deferred acceptance plea. The previous committee or the bill itself, however, offers no justification for the increase of penalty for the original offense of obstruction of justice.

Therefore, if the committee is intent in amending HRS 710-1072.5 to include the additional prohibited conduct, the OPD recommends that *subsection (1)(a) (witness refusing to testify after being granted immunity) remain a Class C felony while subsection (1)(b) (influencing, obstructing the due administration of justice) is a class B felony.*

### **Vague and Ambiguous**

The OPD also has serious concerns that the term “due administration of justice” is simply too vague and ambiguous as used in the following passage:

Influences; obstructs; impedes; or endeavors to influence, obstruct, or impede, the *due administration of justice* by means of force, threat of force, coercion, fraud, or deception.

Clearly, as the title of the bill suggest, the intent of the bill is to improve the standard of conduct within government and to combat corruption. However, as written, the OPD is concerned that this law would result in unintended consequences and arrests, as the term “due administration of justice” may apply to non-government conduct. For example, a distraught parent who attempts to prevent police officers from arresting their child may be charged with the offense of obstruction of justice, as the parent is impeding the “due administration of justice” (i.e., arrest). A Thirty Meter Telescope protestor who attempts to stop the police from arresting fellow protestors

may also be charged with this offense, as the protestor is obstructing the “due administration of justice” (i.e., arrest).

### **Deferred Acceptance of Guilty Plea**

Unlike the other remaining pending measures relating to standards of conduct of public officers and employees, ***H.B. No. 710 HD1 SD1 appears to be the only measure that denies a deferred acceptance of guilty or no-contest plea to anyone convicted of a public corruption offense.*** For example, the following bills allow a defendant to be eligible for a deferred acceptance of guilty plea or nolo contendere plea:

- H.B. No. 707 HD1 SD1 (makes it a class C felony to make false, fictitious, or fraudulent claims against the government)
- H.B. No. 711 HD1 SDI (establishes the offense of fraud as a class B felony)
- H.B. No. 985 (establishes the class C felony offense of government fraud)
- S.B. No. 228 SD1 HD1 (establishes the offense of fraud as a class B felony; establishes the offense of making a false, fictitious, or fraudulent claim against government as a class C felony; establishes the offense of the use of false statements a class C felony)

Indeed, this measure even allows a person charged with the offense of making a false statement to be eligible for a deferred acceptance of guilty plea. *See* page 2, lines 5 to 7.

Furthermore, not all conduct, constituting obstruction of justice, is the same. Likewise, not all individuals that commit these offenses are the same. Conduct of a person unlawfully entering a government building and attempting to impede the lawful transition of power is not the same as the distraught parent making it difficult for the police to arrest their child. But, as currently written, this measure would make both individuals ineligible for a deferred acceptance of guilty plea. Therefore, the OPD opposes any measure that denies judicial discretion in sentencing, including allowing a deferred acceptance plea, as it removes a judge’s ability to consider a broad range of options in the disposition of a case.

Circuit Court judges are subjected to a rigorous vetting process. A process that involves a roughly 40+ page judicial application, an investigation by the Hawai'i State Bar Association, an investigation by the Judicial Selection Commission, nomination by the Governor, questioning by the Senate Judiciary Committee, and confirmation by the full Senate. Judges are selected for their integrity, diligence, legal knowledge and ability to fulfill the responsibilities and duties of the position. Judges should retain the power and authority to treat and consider each case on an individual basis. Judges should have the discretion to weigh mitigating factors as well as aggravating factors and to sentence criminal defendants accordingly. Judges receive a pre-sentencing report that describes a person's history, character, remorse, rehabilitative efforts, family support or lack thereof, which is carefully considered in determining the proper disposition of a case.

Thus, Circuit Court judges should be allowed to use their discretion to grant deferrals in the types of cases envisioned by H.B. No. 710.

Keeping in mind that judges cannot exercise this discretion without meeting certain criteria, HRS § 853-1 provides, in pertinent part:

(1) When a defendant voluntarily pleads guilty or nolo contendere, prior to commencement of trial, to a felony, misdemeanor, or petty misdemeanor; (2) It appears to the Court that the defendant is not likely to engage in a criminal course of conduct; and

\* \* \* \*

(3) The ends of justice and the welfare of society do not require that the defendant shall presently suffer the penalty imposed by law, the court, without accepting the plea of nolo contendere or entering a judgment of guilt and with the consent of the defendant and after considering the recommendations, if any, of the prosecutor, may defer further proceedings.

If the present measure passes, defendants charged with these offenses would be prohibited from requesting a deferral of their charges. As stated in HRS Chapter 853, the trial court, after considering the merits of the case, and hearing from the prosecutor, may or may not grant a defendant's motion to defer the proceedings. In order for the trial court to defer the proceedings, ***it must find that the defendant is not likely to re-offend or engage in a (further) course of criminal conduct, and that the ends of justice and welfare of society do not require the defendant receive a criminal conviction.***

Because of this high standard, *the vast majority of requests by defendants to defer their criminal proceedings are not granted by the trial courts.* Defendants must still be deemed worthy of a deferral. Criminal history, seriousness of the offense, history of substance abuse, lack of employment, and previous criminal behavior (even if uncharged) are common reasons argued by prosecutors and cited by judges for a denial of a defendant's motion to defer the acceptance of his or her guilty or no contest plea.

Why is it important that some defendants receive deferrals of their criminal proceedings? A criminal conviction follows an individual for the rest of his/her life. It will impact their ability to seek and maintain employment and to receive government benefits. A young, immature, and naive defendant who has admittedly committed a criminal offense, but is remorseful and not likely to re-offend, should be allowed, in limited circumstances, to be given the opportunity for a second chance -- a chance to avoid a criminal conviction. It should also be noted that a deferral can only be granted prior to a trial in any matter. Thus, the opportunity to seek a deferral enhances the chance that the case will be resolved without a trial, which is a substantial savings to the judicial system as a whole.

Thank you for the opportunity to testify on this measure.



STATE OF HAWAII  
CAMPAIGN SPENDING COMMISSION

235 SOUTH BERETANIA STREET, ROOM 300  
HONOLULU, HAWAII 96813

April 3, 2023

TO: The Honorable Karl Rhoads, Chair  
Senate Committee on Judiciary

The Honorable Mike Gabbard, Vice Chair  
Senate Committee on Judiciary

Members of the Senate Committee on Judiciary

FROM: Kristin Izumi-Nitao, Executive Director  
Campaign Spending Commission

SUBJECT: **Testimony on H.B. No. 710, HD1, SD1, Relating to Government.**

Wednesday, April 5, 2023  
9:45 a.m., Conference Room 016 & Videoconference

Thank you for the opportunity to testify on this bill. This bill was introduced on behalf of the Commission to Improve Standards of Conduct. The Campaign Spending Commission ("Commission") supports this bill.

This bill adds a new section to Chapter 710, Hawaii Revised Statutes, to establish the criminal offense of using or making false statements or entries in matters within the jurisdiction of the executive, legislative, or judicial branch of the state or counties as a class C felony. The bill also disqualifies a person convicted under this new section from holding elective public office for a period of ten years. This new offense is modeled after federal law. The bill also amends the offense of obstruction of justice to include the obstruction of the due administration of justice by means of force, threat of force, coercion, fraud, or deception. This amendment is also modeled after federal law. The bill elevates the offense of obstruction of justice from a class C to a class B felony and makes a person charged with the crime of obstruction of justice ineligible for a deferred acceptance of a guilty or *nolo contendere* plea.

The Commission supports the enhancement of criminal penalties for offenses involving deception in government operations. If enforced, the Commission believes that criminal penalties are the more effective than civil fines to deter violations of law.

The Commission requests that this Committee pass H.B. No. 710, SD1.



DEPARTMENT OF THE PROSECUTING ATTORNEY  
**CITY AND COUNTY OF HONOLULU**

ALII PLACE  
1060 RICHARDS STREET • HONOLULU, HAWAII 96813  
PHONE: (808) 768-7400 • FAX: (808) 768-7515

STEVEN S. ALM  
PROSECUTING ATTORNEY

THOMAS J. BRADY  
FIRST DEPUTY  
PROSECUTING ATTORNEY



**THE HONORABLE KARL RHOADS, CHAIR**  
**SENATE COMMITTEE ON JUDICIARY**  
**Thirty-Second State Legislature**  
**Regular Session of 2023**  
**State of Hawai'i**

April 5, 2023

**RE: H.B. 710, H.D. 1, S.D. 1; RELATING TO GOVERNMENT.**

Chair Rhoads, Vice Chair Gabbard, and members of the Senate Committee on Judiciary, the Department of the Prosecuting Attorney of the City and County of Honolulu ("Department") submits the following testimony in **support** of H.B. 710, S.D. 1, with **suggested amendments**.

The purpose of H.B. 710, H.D. 1, S.D. 1, is to: (1) establish a new criminal offense under state law, based on a similar statute currently used under federal law, to prohibit false statements or entries in nearly all matters within the jurisdiction of the executive, legislative, and judicial branches of our State and local government<sup>1</sup>; and (2) amend the offense of obstruction of justice (HRS §710-1072.5) to add language modeled after the "omnibus clause" of federal statute 18 U.S.C. §150(a), and increase the offense to a class B felony.<sup>2</sup>

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<sup>1</sup> Language that applies to judicial proceedings and matters before the Legislature would be somewhat more tailored, as those areas often involve parties or testifiers who argue the same issue from differing and/or conflicting perspectives.

<sup>2</sup> 18 U.S.C. §1503 states (emphasis added):

§1503. Influencing or injuring officer or juror generally. (a) **Whoever** corruptly, or by threats or force, or by any threatening letter or communication, endeavors to influence, intimidate, or impede any grand or petit juror, or officer in or of any court of the United States, or officer who may be serving at any examination or other proceeding before any United States magistrate judge or other committing magistrate, in the discharge of his duty, or injures any such grand or petit juror in his person or property on account of any verdict or indictment assented to by him, or on account of his being or having been such juror, or injures any such officer, magistrate judge, or other committing magistrate in his person or property on account of the performance of his official duties, or **corruptly or by threats or force, or by any threatening letter or communication, influences, obstructs, or impedes, or endeavors to influence, obstruct, or impede, the due administration of justice**, shall be punished as provided in subsection (b). If the offense under this section occurs in connection with a trial of a criminal case, and the act in violation of this section involves the threat of physical force or physical force, the maximum term of imprisonment which may be imposed for the offense shall be the higher of that otherwise provided by law or the maximum term that could have been imposed for any offense charged in such case.

(b) The punishment for an offense under this section is—

(1) in the case of a killing, the punishment provided in sections 1111 and 1112;

While the Department supports most of the amendments made by prior committees on this bill, we have serious concerns about the proposed offense of “Using or making false statements or entries” being eligible for deferred acceptance of guilty or nolo contendere plea, as that could result in these serious crimes being wiped from an offender’s record, almost as if it never happened. To date, federal prosecutors have largely taken the lead in prosecuting these types of cases, largely due to the greater effectiveness **and more serious consequences** contained in federal law. To better equip our county prosecutors with the tools to prosecute this type of corruption, the Department strongly believes the language of our State laws must be strengthened **and** carry serious consequences. Allowing deferral (i.e. delayed dismissal) of these types of charges does not present a strong deterrent nor appropriate repercussion for this type of act.

Notably, this proposed offense could only be committed if the offender **knowingly** falsified, concealed, covered up of materials facts, or made similarly false/fraudulent statements or documents; **it would not be possible for someone to be convicted of this offense if their actions were merely reckless or negligent.** Please keep in mind, even if deferral is prohibited—as the Department believes it should be—it is highly unlikely that these offenders would ever be sentenced to prison time. Based on the Department’s general experience with the State criminal justice system, we would anticipate that all or nearly all offenders convicted of this type of charge would be sentenced to probation. As such, we respectfully **ask that that word “not” be re-inserted on p. 2, ln. 5,** to read: “...this section shall not be eligible...”

If the Committee still wishes to give potential offenders the opportunity to qualify for deferred acceptance of guilty or nolo contendere plea, despite the fact that this would allow the case to be dismissed after the deferral period, the Committee may want to delete the relevant sentence (i.e. “A person charged under this section shall be eligible for a deferred acceptance of guilty plea or nolo contendere plea under chapter 853.” at p. 2, lns. 5-7) from the bill entirely. HRS Chapter 853 already provides eligibility criteria and procedures for deferral, and no additional reference is needed. Also, this sentence could be interpreted to mean that all of these offenders are mandated to be eligible for deferral (despite the criteria in Chapter 853), and we do not believe that is the intent.

With regards to federal caselaw, the Department respectfully **suggests that p. 2, lns. 1-3** be deleted, as it would be unprecedented, and potentially very confusing and problematic, for the interpretation of one of our state statutes to be entirely reliant on federal caselaw. In prior versions of this bill (e.g. H.B. 710, H.D. 1), we believe it was helpful for Section 1 to note that State courts and counsel “should look to federal case law and precedent for direction” (p. 3, lns. 1-2), as that provided appropriate guidance for everyone involved, without conflating state and federal law.

Given the years of scandal that have shaken the public’s trust in Hawaii’s state and local government, the Department believes our state laws should be amended to reflect the egregious nature of certain offenses—such as false statements and entries, and obstruction of justice—that further erode the public’s trust in our system and/or manipulate the system to one’s own benefit. With the amendments suggested above, the Department believes that H.B. 710, H.D. 1, S.D. 1, would appropriately address the relevant offenses, and allow our county prosecutors to reasonably

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(2) in the case of an attempted killing, or a case in which the offense was committed against a petit juror and in which a class A or B felony was charged, imprisonment for not more than 20 years, a fine under this title, or both; and

(3) in any other case, imprisonment for not more than 10 years, a fine under this title, or both.

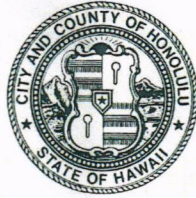
Available online at: <https://uscode.house.gov/view.xhtml?path=/prelim@title18/part1/chapter73&edition=prelim>. Last accessed March 21, 2023.

pursue prosecution of these matters.

For all of the foregoing reasons, the Department of the Prosecuting Attorney of the City and County of Honolulu **supports** the passage of H.B. 710, H.D. 1, S.D. 1, with the **suggested amendments**. Thank you for the opportunity to testify on this matter.

POLICE DEPARTMENT  
CITY AND COUNTY OF HONOLULU

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



RICK BLANGIARDI  
MAYOR

ARTHUR J. LOGAN  
CHIEF

KEITH K. HORIKAWA  
RADE K. VANIC  
DEPUTY CHIEFS

OUR REFERENCE DA-MS

April 5, 2023

The Honorable Karl Rhoads, Chair  
and Members  
Committee on Judiciary  
State Senate  
Hawaii State Capitol  
415 South Beretania Street, Room 016  
Honolulu, Hawaii 96813

Dear Chair Rhoads and Members:

SUBJECT: House Bill No. 710, H.D 1, S.D 1, Relating to Government

I am Dru Akagi, Acting Captain of the Criminal Investigation Division of the Honolulu Police Department (HPD), City and County of Honolulu.

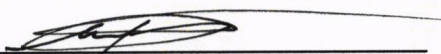
The HPD supports House Bill No. 710, H.D 1, S.D 1, Relating to Government.

Making false statements or entries within local government can weaken democracy. The issuance of false statements or entries undoubtedly impacts government resources and conditions. This measure will strengthen the HPD's ability to combat trickery and deception against local government. In addition, the amendment to the offense of obstruction of justice is consistent with the purpose of the bill.

The HPD urges you to support House Bill No. 710, H.D. 1, S.D 1, Relating to Government. Thank you for the opportunity to testify.

APPROVED:

Sincerely,

  
Arthur J. Logan  
Chief of Police

  
Dru Akagi, Acting Captain  
Criminal Investigation Division

**HB-710-SD-1**

Submitted on: 4/2/2023 8:18:25 PM

Testimony for JDC on 4/5/2023 9:45:00 AM

<b>Submitted By</b>	<b>Organization</b>	<b>Testifier Position</b>	<b>Testify</b>
Dara Carlin, M.A.	Individual	Support	Written Testimony Only

Comments:

Stand in Strong Support!