

# S.B. NO. 3033

JAN 24 2024

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## A BILL FOR AN ACT

RELATING TO PHYSICAL EVIDENCE.

**BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF HAWAII:**

1           SECTION 1. The purpose of this Act is to amend section  
2 710-1076, Hawaii Revised Statutes, the statute for the criminal  
3 offense of tampering with physical evidence, to adopt the  
4 wording of Model Penal Code section 241.7, "Tampering with or  
5 Fabricating Physical Evidence".

6           SECTION 2. Section 710-1076, Hawaii Revised Statutes, is  
7 amended to read as follows:

8           "§710-1076 **Tampering with or fabricating physical**  
9 **evidence.** (1) A person commits the offense of tampering with  
10 or fabricating physical evidence if, believing that an official  
11 proceeding or investigation is pending or about to be  
12 instituted, the person:

13           (a) Destroys, mutilates, conceals, removes, or alters  
14 physical evidence with intent to impair its verity or  
15 availability in the pending or prospective official  
16 proceeding[+] or investigation; or

17           (b) Makes, presents, [~~or~~] offers, or uses any false  
18 physical evidence, knowing it to be false, with intent

S.B. NO. 3033

1           that it be introduced in the pending or prospective  
2           official proceeding[-], or with intent to mislead a  
3           public servant who is or may be engaged in such  
4           proceeding or investigation.

5           (2) "Physical evidence," as used in this section includes  
6 any article, object, document, record, or other thing of  
7 physical substance.

8           (3) Tampering with or fabricating physical evidence is a  
9 misdemeanor."


10          SECTION 3. This Act does not affect rights and duties that  
11 matured, penalties that were incurred, and proceedings that were  
12 begun before its effective date.

13          SECTION 4. Statutory material to be repealed is bracketed  
14 and stricken. New statutory material is underscored.

15          SECTION 5. This Act shall take effect upon its approval.

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INTRODUCED BY: 

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BY REQUEST

# S.B. NO. 3033

**Report Title:**

Penal Code; Offenses Against Public Administration; Tampering with or Fabricating Physical Evidence

**Description:**

Amends the criminal offense statute for tampering with physical evidence to adopt the wording of the Model Penal Code for the same offense. The class of offense is unchanged.

*The summary description of legislation appearing on this page is for informational purposes only and is not legislation or evidence of legislative intent.*

## JUSTIFICATION SHEET

DEPARTMENT: Attorney General

TITLE: A BILL FOR AN ACT RELATING TO PHYSICAL EVIDENCE.

PURPOSE: To amend section 710-1076, Hawaii Revised Statutes (HRS), to adopt the wording of Model Penal Code section 241.7, and thereby prohibit additional means of tampering with or fabricating physical evidence in an official proceeding or investigation.

MEANS: Amend section 710-1076, HRS.

JUSTIFICATION: The strength and stability of our government relies on the integrity and truthfulness of official proceedings and investigations. There are many ways that an individual could tamper with evidence, and thereby tamper with our government institutions.

The existing statute omits several phrases from the Model Penal Code. Tampering with or fabricating evidence can take many forms beyond what is currently captured in the existing statute, and the Model Penal Code wording encompasses those additional specific acts. This bill amends the current statute to adopt the wording in the Model Penal Code, thereby expanding the reach of this misdemeanor offense. It also prohibits any person from making, presenting, or using evidence "with intent to mislead a public servant who may be engaged in such proceeding or investigation."

This bill also seeks to insert an "or" between paragraphs (a) and (b) in subsection (1), to clarify that the statute does not require fulfillment of both elements.

Impact on the public: This bill will expand the reach of section 710-1076, HRS, to apply to more instances of tampering with physical evidence. For example, the statute will now

encompass such conduct when the intent of the perpetrator is to "mislead a public servant who is or may be engaged" in a proceeding "or investigation."

Impact on the department and other agencies:  
This bill will have a positive impact on the department's efforts to prosecute criminal offenses, as it expands the reach of the existing statute to criminalize additional means of tampering with official proceedings or investigation.

GENERAL FUND: None.

OTHER FUNDS: None.

PPBS PROGRAM  
DESIGNATION: None.

OTHER AFFECTED  
AGENCIES: The county police departments, the prosecutors' offices, and the Department of Law Enforcement.

EFFECTIVE DATE: Upon approval.