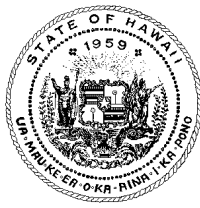


JOSH GREEN, M.D.
GOVERNOR
KE KIA'ĀINA



STATE OF HAWAII | KA MOKU'ĀINA 'O HAWAII
**DEPARTMENT OF CORRECTIONS
AND REHABILITATION**
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No. _____

TESTIMONY ON SENATE BILL 2194, SENATE DRAFT 1
RELATING TO UNMANNED AIRCRAFT.

By
Tommy Johnson, Director
Department of Corrections and Rehabilitation

Senate Committee on Judiciary
Senator Karl Rhoads, Chair
Senator Mike Gabbard, Vice Chair

Wednesday, February 28, 2024; 10:00 a.m.
State Capitol, Conference Room 016 & via Videoconference

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

The Department of Corrections and Rehabilitation (DCR) **supports** Senate Bill (SB) 2194, Senate Draft (SD) 1, which proposes to establish the felony offenses of misuse of unmanned aircraft in the 1st, 2nd, and 3rd degrees and offers amendments.

DCR appreciates that we have all become dependent on technology and the benefits it affords us in our daily lives. For example, most of us have cell phones that allow us to maintain uninterrupted contact both in our personal and professional lives; however, in our correctional facilities, these same cell phones are contraband as they create dangerous situations that allow incarcerated individuals to conduct illegal activities, including, but not limited to the drug trade, gang activities, smuggling other forms of contraband, and have been used to facilitate assaults on both, inmates and staff.

Drones increase dangerousness exponentially for correctional facilities as they can provide for the immediate delivery of contraband including weapons in or near close proximity to our jails and prisons with little warning or detection. DCR facilities have had multiple instances recently of "drug drops" where individuals late at night leave what

appears to be crumpled trash at our fence lines for inmates to retrieve. DCR has been fortunate to intercept these drops and is working with law enforcement to identify the individual, although this can be difficult as they are often unrecognizable on video surveillance due to the darkness. Drones create an added advantage for these individuals, as the person responsible for controlling the drone can do so from a position and distance that makes it difficult to trace. These are some examples of the pitfalls of technology that create an increased risk to the safety, security, and good governance of our institutions.

Thank you for the opportunity to provide testimony in **support** on SB 2194, SD 1.

STEVEN S. ALM
PROSECUTING ATTORNEY
LOIO HO'OPI'I

**DEPARTMENT OF THE PROSECUTING
ATTORNEY**
KA 'OIHANA O KA LOIO HO'OPI'I
CITY AND COUNTY OF HONOLULU

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THE HONORABLE KARL RHOADS, CHAIR
SENATE COMMITTEE ON JUDICIARY
Thirty-Second State Legislature
Regular Session of 2024
State of Hawai'i

February 28, 2024

RE: S.B. 2194, SD1; RELATING TO UNMANNED AIRCRAFT.

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 **strong support** of S.B. 2194, SD1. This bill is part of the Department's 2024 legislative package, and we thank you for hearing it.

The purpose of S.B. 2194, SD1 is to establish specific offenses in state law, to address increasing public safety concerns presented by uncrewed aircraft, also known as “drones.” To remain consistent with developing changes in federal- and industry-related terminology, we recommend these aircraft be referred to as **“uncrewed aircraft.”** throughout the bill.¹

As civilian use of drones becomes increasingly popular among the general public, the risk of drones being used to harm people or property—or for other improper purposes²—is becoming

¹ See United States Department of the Interior, “DOI OPERATIONAL PROCEDURES MEMORANDUM (OPM) – 11,” December 2, 2022, p.1 (making and referring to federal policies changing the term “unmanned aircraft systems” to “unscrewed aircraft systems”). Available online at <https://www.doi.gov/sites/doi.gov/files/opm-11.pdf>; last accessed January 26, 2024.

² See “Texas Man Charged with Using Drone to Deliver Contraband to Prison,” United States Attorney’s Office, Northern District of Texas, August 12, 2022. Available online at <https://www.justice.gov/usao-ndtx/pr/texas-man-charged-using-drone-deliver-contraband->

a near-inevitable reality. While the Federal Aviation Administration (“FAA”) ultimately has the power and authority to enforce all Federal Aviation Regulations, including those pertaining to drones, the FAA has stated that “State and local Law Enforcement Agencies (LEA) are often in the best position to deter, detect, immediately investigate, and, as appropriate, pursue enforcement actions to stop unauthorized or unsafe UAS [unmanned aircraft systems, i.e. drones] operations.”³

Moreover, while the Department of Homeland Security (“DHS”) generally takes the lead in matters of counter terrorism and/or national security—the level at which some people associate “drone attacks”—recent reports have indicated that DHS wants “every community [to have] the ability to detect and mitigate drone activity responsibly in line with the same safeguards that we’re already employing at the federal level...[because DHS] can’t be everywhere. It’s just not possible.”⁴ Other reports indicate that “DHS gets thousands of requests a year from event organizers who want drone protection, [yet] it grants ‘only a few dozen.’ [And]...the FBI has only three agents dedicated to drone defense.”⁵

Consistent with these types of concerns, S.B. 2194, SD1 would establish a wide variety of drones-involved offenses, some of which would be unique to the proposed chapter—such as arming a drone with a firearm (found at S.B. 2194, SD1, page 3, lines 12-14)—and some of which are simply heightened levels of existing offenses. For example, causing “substantial bodily injury” (e.g. broken bone, serious concussion, certain types of internal injuries) to another is typically a class C felony,⁶ but it would be considered a class B felony if done (intentionally or knowingly) using a drone (found at S.B. 2194, SD1, page 5, lines 13-14). Because many consumer drones can be controlled from great distances away from the operator—and it is often not possible for law enforcement to locate or identify the person operating a drone—it would make sense for these types of activities to be strongly deterred. Also, drones can inflict a great deal of injury, or transport contraband materials, beyond what most people would be capable of doing themselves.

One new offense in particular, found on page 6, lines 16-19, was added to the bill after conferring with the Honolulu Fire Department (“HFD”) and Honolulu Police Department (“HPD”); this would make it a class C felony to (intentionally, knowingly or recklessly) “obstruct[], impair[] or hinder[] the performance of a police officer, deputy sheriff, or fire department personnel acting under color of their official authority.” In recent years, civilian

[prison#:~:text=Texas%20Man%20Charged%20with%20Using%20Drone%20to%20Deliver%20Contraband%20to%20Prison,-Friday%2C%20August%202012&text=A%20Smithville%20man%20who%20allegedly,Meacham](#); last accessed February 1, 2024.

³ “Law Enforcement Guidance for Suspected Unauthorized UAS Operations,” U.S. Department of Transportation, Federal Aviation Administration, 2016. Available online at https://www.faa.gov/sites/faa.gov/files/uas/resources/policy_library/FAA_UAS-PO_LEA_Guidance.pdf; last accessed February 1, 2024.

⁴ “DHS ‘concerned’ drones being used for ‘malicious purposes,’” ABC News, November 21, 2023. Available online at <https://abcnews.go.com/Politics/dhs-concerned-drones-malicious-purposes/story?id=105064562>; last accessed on February 1, 2023. (Website notes: “The authorization expires in February,” meaning unknown.)

⁵ “U.S. tech companies prepare for potential drone attacks as international strikes spark concern,” NBC News, January 14, 2024. Available online at <https://www.nbcnews.com/tech/security/flip-side-drone-boom-airports-stadiums-power-plants-need-defending-rcna128248>; last accessed February 1, 2024.

⁶ See HRS §707-711(1)(a), Assault in the second degree; and “substantial bodily injury” defined in HRS §707-700.

drones have increasingly been seen flying into or near HFD operations, which is a major concern.⁷ Not only does this threaten the safety of rescue victims and/or lengthen the time it takes for a fire to be extinguished, it also endangers the pilots of HFD's helicopters and anyone on the ground who happens to be traversing below them.

It is also our understanding that HFD's own drone program—which has been used to safely approach hazardous materials, assess brush fires with thermal imaging cameras, and even deliver life jackets to boating accident victims at sea, among other uses—has been hindered more frequently by civilian drones appearing during HFD operations.⁸ Because Hawaii has a lot of remote or mountainous areas, which are extremely hazardous and/or time-consuming for fire department and law enforcement personnel to travel by land, the use of drones by these county agencies has become a crucial tool for a wide range of public safety purposes.⁹

In order to adjust to the increasing availability and use of drones by the public; discourage any intentional or knowing (or reckless) misuse of drones that is detrimental to others; and ensure our state and county prosecutors are equipped to properly charge these types of offenses, if and when they occur, the Department urges this Committee to pass S.B. 2194, SD1.

For all of the foregoing reasons, the Department of the Prosecuting Attorney of the City and County of Honolulu **strongly supports** the passage of S.B. 2194, SD1. Thank you for the opportunity to testify on this matter.

⁷ See “Drone interferes with helicopter rescue at Koko Head trail,” Honolulu Star Advertiser, January 14, 2023. Available online at <https://www.staradvertiser.com/2023/01/14/breaking-news/drone-interferes-with-helicopter-rescue-at-koko-head-trail/>; last accessed February 1, 2024. See also “HFD: Civilian drones are delaying care, putting people at risk during rescue operations,” Hawaii News Now, October 4, 2022. Available online at: <https://www.hawaiinewsnow.com/2022/10/05/hfd-civilian-drones-are-delaying-care-putting-people-risk-during-rescue-operations/>; last accessed February 1, 2024.

⁸ See “HFD is expanding its drone program to save more lives. The problem? Crowded skies,” Hawaii NewsNow, August 25, 2022. Available online at <https://www.khon2.com/hawaii-crime/drones-and-canine-units-are-key-tools-in-the-search-for-remains-of-isabella-kalua/?ipid=promo-link-block1>; last accessed February 1, 2024. See also “Your drone is interfering with Hawaii emergencies,” KHON2, July 21, 2022. Available online at <https://www.khon2.com/local-news/hawaii-civilian-drones-are-in-the-way-of-emergencies/>; last accessed February 1, 2024.

⁹ See “Drones and canine units are key tools in the search for remains of Isabella Kalua,” KHON2, November 11, 2021. Available online at <https://www.khon2.com/hawaii-crime/drones-and-canine-units-are-key-tools-in-the-search-for-remains-of-isabella-kalua/?ipid=promo-link-block1>; last accessed February 1, 2024.



TESTIMONY BEFORE THE SENATE COMMITTEE ON JUDICIARY

SB 2194, SD1 Relating to Unmanned Aircraft

Wednesday, February 28, 2024
10:00 AM
State Capitol, Conference Room 016

Cullen R. Chong
UAS Program Manager
Hawaiian Electric

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

My name is Cullen Chong and I am testifying on behalf of Hawaiian Electric offering comments and suggesting amendments to SB 2194, SD1, Relating to Unmanned Aircraft.

First, we propose adding Public Utility, as defined in Hawaii Revised Statutes (HRS), section 269-1, to the list of those persons and entities exempt in HRS 711-B(3), 711-C(3), and 711-D(3) of the bill. This exemption would mitigate the risk of Hawaiian Electric's employees and contractors being prosecuted as felons for performing normal unmanned aircraft system (UAS) operations in the ordinary course of business.

Second, we have concerns regarding language on page 6, line 12. Specifically, we believe the terms "intentionally" and "knowingly" are overly broad and its application might lead to unintended consequences and be left to prosecutorial discretion. In theory, any commercial unmanned aerial vehicle ("UAV") operator whose UAV becomes inoperable in flight - - for reasons *other* than operator's negligence or reckless activity - - might result in damaged property. For example, an otherwise prudent UAV pilot could have his or her UAV be struck by another piloted UAV, or a bird, or face rapid battery

loss, or its flight guidance commands might be temporarily blocked by interference. In these instances, the UAV pilot's initial command and control of the UAV was both "intentional" and "knowing," but the events that followed which led to property damage were certainly not intended, and certainly not reckless.

To address this issue, we are requesting the damage dollar amount be increased from \$750 to a higher level, which would align more with a third-degree felony. For example, many accidents with bicycles, mopeds, scooters, opening car doors in a parking lot result in more than \$750 damage.

Additionally, we request the below amendment on page 7, lines 3-5:

(d) Operates an uncrewed aircraft and thereby damages the property of another **by an unmanned aircraft**, without the other's consent, in an amount exceeding \$ ____.

This amendment would make it a felony if the operator intentionally, knowingly, or recklessly damages the property of another in an amount exceeding a certain dollar amount. Given prosecutorial discretion, the state would have to show the UAV operator had the requisite intent to cause property damage, and not just the intent to initiate unmanned aerial activities that unexpectedly led to property damage.

Lastly, we recommend amending language on page 7, lines 1-2 to read the following:

(c) Operates an uncrewed aircraft and thereby causes bodily injury to another person **by an unmanned aircraft**;

This amendment would clarify that a felony would only be committed if the UAV operator *intentionally, knowingly or recklessly* injures another person with an unmanned aircraft.

Thank you for the opportunity to comment on and provide amendments to SB2194, SD1.