



**WRITTEN TESTIMONY OF  
THE DEPARTMENT OF THE ATTORNEY GENERAL  
KA 'OIHANA O KA LOIO KUHINA  
THIRTY-THIRD LEGISLATURE, 2025**

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**ON THE FOLLOWING MEASURE:**

S.B. NO. 871, S.D. 1, RELATING TO ARSON.

**BEFORE THE:**

SENATE COMMITTEE ON JUDICIARY

**DATE:** Friday, February 21, 2025      **TIME:** 10:20 a.m.

**LOCATION:** State Capitol, Room 016 and Videoconference

**TESTIFIER(S):**      **WRITTEN TESTIMONY ONLY.**  
(For more information, contact Tricia M. Nakamatsu,  
Deputy Attorney General, at (808) 586-1500)

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Chair Rhoads and Members of the Committee:

The Department of the Attorney General (Department) provides the following comments and suggested amendments.

The purpose of the bill is to improve public safety by: (1) authorizing periods of imprisonment for individuals with previous arson convictions; (2) authorizing additional penalties for arson crimes that endanger vulnerable areas; and (3) requiring restitution to victims of arson who experienced property damage.

**Restitution**

While the Department strongly agrees that victims of arson should be given restitution for all reasonable and verified losses and damages resulting from the crime, restitution is already mandated for all victims of crime under section 706-646, Hawaii Revised Statutes (HRS). Because section 706-646, HRS, addresses restitution in a comprehensive and well-reasoned manner, the Department recommends deleting the first of two new sections to be added to chapter 708, HRS, by section 2 of this bill, on page 3, lines 8-11. That new section is a pared-down, inconsistent version of section 706-646, HRS, which is unnecessary and would be confusing to implement.

**Increased Penalties**

In section 1 of the bill, the Legislature finds that existing statutes relating to arson are insufficient to deter would-be offenders, and finds that "[e]nhanced penalties,

including increased minimum periods of imprisonment for repeat [arson] offenders are necessary to . . . strengthen accountability and serve as a deterrent against future offenses" (page 1, lines 11-15, and page 2, lines 1-2).

If the Committee wishes to strengthen penalties for repeat arson offenders, the Department recommends deleting the amendments to section 708-8251, HRS, on page 4, lines 14-17, and the amendments to section 780-8252, HRS, on page 5, lines 7-11, and either: (1) adding to the existing repeat offender sentencing provisions under section 706-606.5, HRS, by adding Arson in the Third and Fourth Degree to the list of qualifying offenses; or (2) creating mandatory minimum terms of imprisonment.

If the Committee wishes to strengthen penalties for first-time arson offenders, all levels of arson could be made non-probationable, meaning that the court would have to sentence the offender to some length of incarceration, rather than probation.

### **Sentencing of Repeat Offenders**

Currently, Arson in the First, Second, Third, and Fourth Degree are respectively classified as a Class A, B, C felony, and misdemeanor. In addition, section 706-606.5, HRS, "Sentencing for repeat offenders," already provides for mandatory minimum prison terms without possibility of parole if a person was previously convicted of:

- Murder in the second degree;
- Any class A felony;
- Any class B felony; or
- Certain class C felonies;

and the person gets a subsequent conviction for any of these offenses. Because Arson in the Third Degree, section 708-8253, HRS, is currently **not** one of the enumerated class C felony felonies under section 706-606.5(1), HRS, the Committee may **add** this to the list, if it wishes to do so.

Depending on the severity of the new offense, the relevant lookback period for prior convictions ranges from five to twenty years, and there are different mandatory minimum terms of imprisonment specified for having one, two, or three (or more) prior felony convictions within the relevant lookback period. Thus, under section 706-606.5, HRS, someone who is convicted of Arson in the First Degree, for example, who was

previously convicted of **any** covered offense in the past twenty years, would be sentenced to a mandatory minimum imprisonment of six years and eight months, for the present conviction. Under the same example, if the person has three or more convictions for **any** of the covered offenses in the past twenty years, the mandatory minimum imprisonment would be twenty years for the present conviction. Section 706-606.5(6), HRS, provides that "[t]he court may impose a lesser mandatory minimum period of imprisonment without possibility of parole than that mandated by this section where the court finds that strong mitigating circumstances warrant the action," if the court provides a written opinion stating the reasons for imposing the lesser sentence.

For misdemeanor offenses, Section 706-606.5(5), HRS, lists six specific offenses that qualify for mandatory minimum imprisonment of nine months, if the person has three prior convictions for any of the enumerated offenses, within three years of the present offense. Because Arson in the Fourth Degree, section 708-8254, HRS, is currently **not** listed under section 706-606.5(5), HRS, the Committee may also want to amend section 706-606.5(5), HRS, to **add** that offense to the list.

Another alternative that already exists for the misdemeanor offense of Arson in the Fourth Degree is "Habitual property crime," section 708-803, HRS, and no changes are needed to that statute. If an offender has prior convictions for **any** offense under chapter 708, HRS, for:

- Any combination of two felonies or misdemeanors;
- Any combination of either one felony or one misdemeanor and one petty misdemeanor; or
- Three petty misdemeanors;

within the past ten years, and commits Arson in the Fourth Degree (or any other crime under chapter 708, HRS), the person may be charged with a class C felony. Section 708-803, HRS, specifies that the sentence for Habitual Property Crime shall either be an indeterminate term of imprisonment for five years, with a mandatory minimum imprisonment of not less than one year; or probation for five years with mandatory one year of imprisonment.

### **Mandatory Minimum for Repeat Arson Offenders**

If the Committee prefers to impose mandatory minimum terms of imprisonment for repeat arson offenders, rather than relying on existing repeat offender sentencing provisions, the Department recommends **replacing** the amendments to section 708-8251(3), HRS, on page 4, lines 14-17, for Arson in the First Degree, with the following:

(3) If the person has been previously convicted one or more times for any offense under this part, the person shall be sentenced to an indeterminate term of imprisonment of twenty years pursuant to section 706-659 with a six-year mandatory minimum term of imprisonment without possibility of parole.

For Arson in the Second Degree, the Department recommends **replacing** the amendments to section 780-8252(3), HRS, on page 5, lines 7-11, with the following:

(3) If the person has been previously convicted one or more times for any offense under this part, the person shall be sentenced to an indeterminate term of imprisonment of ten years pursuant to section 706-660 with a four-year mandatory minimum term of imprisonment without possibility of parole.

For Arson in the Third Degree, the Department recommends amending section 708-8253, HRS, by **inserting** a new subsection (3), following page 5, line 21, as follows:

(3) If the person has been previously convicted one or more times for any offense under this part, the person shall be sentenced to an indeterminate term of imprisonment of five years pursuant to section 706-660 with a two-year mandatory minimum term of imprisonment without possibility of parole.

For each of the mandatory minimum terms of imprisonment noted above (underlined) the length of time may be amended to the Committees desired length.

### **First-time Offenders**

If the Committee wishes to strengthen penalties for first-time arson offenders, the Department suggests making Arson in the Second, Third, and Fourth degree non-probationable. This could be done by **adding** the phrase, "without possibility of

probation" onto the end of section 708-8251(2),HRS, on page 4, line 13; section 708-8252(2), HRS, on page 5, line 6; and section 708-8253(2), HRS, on page 5, line 21.

Not only would this require the court to impose incarceration in lieu of probation, but it would also make each of those offenses ineligible for a deferred acceptance of a guilty or no contest plea pursuant to section 853-4(a)(5), HRS, such that the offense would remain as a permanent conviction on the person's criminal record. Arson in the First Degree is a class A felony, and thus is already ineligible for probation or for deferred acceptance of a guilty or no contest plea.

### **Vulnerable Areas**

The Department agrees that vulnerable areas such as schools and hospitals should be given extra protection from arson. However, rather than creating additional sentencing provisions that apply when these areas are endangered or affected, the Department recommends inserting additional provisions to either Arson in the First Degree, under section 708-8251, HRS, or Arson in the Second Degree, under section 708-8252, HRS. This could be done by **inserting** a new paragraph (1)(a), either on page 4, line 8, or page 5, line 1, as follows:

(a) The property is a school, hospital, or living facility;

The Department notes that the term "living facility" at page 3, line 19, and page 6, line 21, may be overly broad and may encompass areas that are not intended to be covered by this bill. The Department suggests adding a definition for this term to clarify the places that are meant to be included, if the Committee wishes to retain living facilities as one of the protected areas.

Thank you for the opportunity to provide comments on this bill.

HONOLULU POLICE DEPARTMENT  
KA 'OIHANA MĀKA'I O HONOLULU  
**CITY AND COUNTY OF HONOLULU**

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OUR REFERENCE **TC-BT**

February 21, 2025

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

Dear Chair Rhoads and Members:

**SUBJECT: Senate Bill No. 871, S.D. 1, Relating to Arson**

I am Thomas Chang, Captain of the Criminal Investigation Division of the Honolulu Police Department (HPD), City and County of Honolulu.

The HPD supports Senate Bill No. 871, S.D. 1, Relating to Arson.

This bill is crucial for protecting the community and safeguarding potential victims. It aims to discourage people from participating in activities that threaten public safety and essential resources. Stricter penalties and longer prison sentences for repeat offenders are essential to tackle the increased danger presented by those with a track record of reckless or harmful behavior. These actions will enhance accountability and act as a deterrent to prevent future crimes. Additionally, this law will strengthen the HPD's ability to address arson-related offenses effectively.

The HPD urges you to support Senate Bill No. 871, S.D. 1, Relating to Arson.

Thank you for the opportunity to testify.

APPROVED:

Sincerely,

  
Arthur J. Logan  
Chief of Police

  
Thomas Chang, Captain  
Criminal Investigation Division

**SB-871-SD-1**

Submitted on: 2/20/2025 12:00:38 AM

Testimony for JDC on 2/21/2025 10:20:00 AM

<b>Submitted By</b>	<b>Organization</b>	<b>Testifier Position</b>	<b>Testify</b>
Ruth Love	Individual	Support	Written Testimony Only

Comments:

SB871 addresses the need for restitution to the victim and the wider community by an arsonist. Perhaps the victim could be a part of a Hawaii board or panel that determines how Community service is served. This would allow the victim to feel somewhat empowered after all they have been through.

I feel that the state of Hawaii should not wait until the 2nd arson offense/conviction to make the convicted arsonist serve time in jail or prison.

Thank you

Mrs Ruth Love