

**TESTIMONY OF
THE DEPARTMENT OF THE ATTORNEY GENERAL
KA 'OIHANA O KA LOIO KUHINA
THIRTY-SECOND LEGISLATURE, 2024**

ON THE FOLLOWING MEASURE:

H.B. NO. 1664, RELATING TO PUBLIC CORRUPTION.

BEFORE THE:

HOUSE COMMITTEE ON JUDICIARY AND HAWAIIAN AFFAIRS

DATE: Wednesday, February 21, 2024 **TIME:** 2:00 p.m.

LOCATION: State Capitol, Room 325 and Videoconference

TESTIFIER(S): Anne E. Lopez, Attorney General, or
Tricia M. Nakamatsu, Deputy Attorney General

Chair Tarnas and Members of the Committee:

The Department of the Attorney General (Department) supports this bill and provides the following comments and recommendations to better effectuate its intent. The Department's Proposed H.D. 1, attached, presents our recommendations in a single compilation.

Currently, the offense of bribery, under section 710-1040, Hawaii Revised Statutes (HRS), is a class B felony offense. This bill seeks to increase the severity of the offense to a class A felony, if: the public servant involved is an elected or appointed official; the value of the bribe exceeds \$20,000; or the person commits three or more acts of bribery as described in section 710-1040(1), HRS, within a three-year period.

The Department agrees that these types of bribery should be very strongly deterred and merit a higher degree of offense. Nevertheless, the Department believes that placing multiple levels of a criminal offense into the same statute is unnecessarily confusing, and should be avoided when possible. For purposes of clarity in charging and record keeping, the Department suggests separating the different level offenses—and their corresponding elements—into separate sections.

In the Proposed H.D. 1, attached, the Department suggests establishing two new offenses: bribery in the first degree and bribery in the second degree. The Department further suggests converting section 710-1040, HRS, into a "definition" of bribery, which can then be used for both bribery in the first and second degrees. In the Proposed H.D.

1, we suggest moving certain wording from section 710-1040(3), regarding public servants who have not yet stepped into their elected, appointed, or designated position, to subsection (1)(b) instead, for ease of reading.

The penalty provision currently found in section 710-1040(4), HRS, could then be moved into the new offenses of bribery in the first degree and bribery in the second degree, with first degree being a class A felony. The phrase "notwithstanding any law to the contrary," in section 710-1040(4), HRS, the current penalty provision for bribery, is extraneous, and may create unnecessary confusion or other unintended negative consequences. Thus, we recommend that that phrase be left out of any penalty provisions for bribery in the first degree and bribery in the second degree. In the Proposed H.D. 1, we also suggest small changes in the wording of bribery in the first degree, subsection (1)(c), for grammatical purposes.

With these changes, the Department believes this bill will provide law enforcement with tools to adequately deter and commensurately punish public corruption. We respectfully ask the Committee to pass the bill with the recommended amendments.

For all the foregoing reasons, the Department supports the passage of this bill, with the amendments suggested in the attached Proposed H.D. 1. Thank you for the opportunity to testify on this matter.

A BILL FOR AN ACT

RELATING TO PUBLIC CORRUPTION.

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

1 SECTION 1. Chapter 710, Hawaii Revised Statutes, is
2 amended by adding two new sections to be appropriately
3 designated and to read as follows:

4 "§710- **Bribery in the first degree.** (1) A person
5 commits the offense of bribery in the first degree if the person
6 commits bribery:

7 (a) And the public servant is an elected or appointed
8 official;

9 (b) And the value, or aggregate value, of the pecuniary
10 benefit for the bribery exceeds \$20,000; or

11 (c) On three or more separate occasions within a three-
12 year period.

13 (2) Bribery in the first degree is a class A felony.

14 (3) A person convicted of violating this section shall not
15 be eligible for a deferred acceptance of guilty plea or nolo
16 contendere plea under chapter 853.

17 §710- **Bribery in the second degree.** (1) A person
18 commits the offense of bribery in the second degree if the

1 person commits bribery other than as provided in section
2 710-_____.

3 (2) Bribery in the second degree is a class B felony.

4 (3) A person convicted of violating this section shall not
5 be eligible for a deferred acceptance of guilty plea or nolo
6 contendere plea under chapter 853."

7 SECTION 2. Section 710-1040, Hawaii Revised Statutes, is
8 amended to read as follows:

9 "**§710-1040 Bribery[-]; defined.** (1) A person commits
10 bribery if:

11 (a) The person confers, or offers or agrees to confer,
12 directly or indirectly, any pecuniary benefit upon a
13 public servant with the intent to influence the public
14 servant's vote, opinion, judgment, exercise of
15 discretion, or other action in the public servant's
16 official capacity; or

17 (b) While a public servant, or after having been elected,
18 appointed, or designated to become a public servant
19 although not yet occupying that position, the person
20 solicits, accepts, or agrees to accept, directly or
21 indirectly, any pecuniary benefit with the intent that
22 the person's vote, opinion, judgment, exercise of

1 discretion, or other action as a public servant will
2 thereby be influenced.

3 (2) It is a defense to a prosecution [~~under subsection~~
4 ~~(1)~~] for bribery that the accused conferred or agreed to confer
5 the pecuniary benefit as a result of extortion or coercion.

6 (3) For purposes of this section, "public servant"
7 [~~includes in addition to persons who occupy the position of~~
8 ~~public servant~~] means the same as defined in section [+]~~710-~~
9 ~~1000~~[], ~~persons who have been elected, appointed, or designated~~
10 ~~to become a public servant although not yet occupying that~~
11 ~~position.~~

12 ~~(4) Bribery is a class B felony. A person convicted of~~
13 ~~violating this section, notwithstanding any law to the contrary,~~
14 ~~shall not be eligible for a deferred acceptance of guilty plea~~
15 ~~or nolo contendere plea under chapter 853]."~~

16 SECTION 3. Statutory material to be repealed is bracketed
17 and stricken. New statutory material is underscored.

18 SECTION 4. This Act shall take effect upon its approval.

Report Title:

Public Corruption; Bribery; Offenses; Penalties

Description:

Increases penalties for bribery under certain circumstances by creating new offenses of bribery in the first degree and bribery in the second degree. Amends section 710-1040, Hawaii Revised Statutes to define "bribery." (HD1 PROPOSED)

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

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Testimony of the Office of the Public Defender, State of Hawai'i, to the House Committee on Judiciary and Hawaiian Affairs

February 21, 2024

H.B. 1664 Relating to Public Corruption

Chair: David A. Tarnas, Vice Chair: Gregg Takayama and Members of the
Committee:

The Office of the Public Defender respectfully opposes H.B. 1664. This bill creates a Class A felony designation for bribery of an elected or appointed official, when said bribe exceeds a \$20,000 threshold, or is committed three or more times within a period of three years. Currently, such transgressions are punished as class B felonies with no chance for deferral.

Although the OPD agrees that public corruption is a serious matter that needs to be deterred, and punished upon conviction, we do feel that designating such a transgression as a class A felony is too severe. Class A felony crimes should be those that entail the most serious threats to public safety, as the penalty calls for an indeterminate term of incarceration of 20 years. As written, this bill would not allow for a sentence of probation upon conviction, which is allowed for class A felony crimes such as manslaughter and certain drug offenses. Twenty years of incarceration should be reserved for those individuals that have demonstrated that

lengthy removal from society is necessary to insure public safety. Most individuals who would be prosecuted under this proposed law, would not be those of such a violent nature that removal from society for 20 years would be necessary. Furthermore, society would not benefit from such individuals being housed and fed for 20 years. The OPD believes that probationary terms would allow for more creative sentences, for those that hoped to bribe, or accepted bribes to influence public policy or operations. Corruption, is a valid concern that needs to be deterred and punished, but it should not be viewed as equal to those crimes currently designated as class A felonies.

For these reasons, we respectfully oppose H.B. 1664.

Thank you for the opportunity to comment on this bill.

POLICE DEPARTMENT
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OUR REFERENCE **TC-BT**

February 21, 2024

The Honorable David A. Tarnas, Chair
and Members
Committee on Judiciary and
Hawaiian Affairs
House of Representatives
415 South Beretania Street, Room 325
Honolulu, Hawaii 96813

Dear Chair Tarnas and Members:

SUBJECT: House Bill No. 1664, Relating to Public Corruption

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

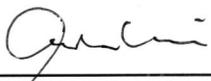
The HPD supports House Bill No. 1664, Relating to Public Corruption.

Public corruption erodes community trust, degrades social and economic prosperity, and weakens democracy. Imposing increased penalties for bribery under certain circumstances will suppress the proliferation of public corruption and lead to a decrease in incidents.

The HPD urges you to support House Bill No. 1664, Relating to Public Corruption. Thank you for the opportunity to testify.

APPROVED:

Sincerely,

For


Arthur J. Logan
Chief of Police


Thomas Chang, Captain
Criminal Investigation Division

Rebecca V. Like
Prosecuting Attorney



Keola Siu
First Deputy
Prosecuting Attorney

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The Honorable David A. Tarnas, Chair
House Committee on Judiciary & Hawaiian Affairs
Thirty-third State Legislature
Regular session of 2024
State of Hawai'i
Hearing date: February 21, 2024

RE: HB 1664, Relating to Public Corruption

Dear Chair Tarnas:

I write to support adoption of Proposed H.D.1, submitted by the Department of the Attorney General.

First, given the myriad of bribery schemes in Hawai'i in recent years among elected and appointed public servants, there is great need for elevated penalties for those who engage in bribery – both against the appointed or elected public servant and the non-public servant furthering a bribe. When the public loses faith in its government leaders, our entire democracy is weakened. These elevated penalties will help deter bribery involving appointed and elected public servants; as well as bribes involving a value of more than \$20,000.

Second, creation of the offenses of bribery in the first degree and bribery in the second degree, clearly distinct offenses, will minimize confusion in charging and prosecuting these offenses. This proposed scheme is similar to the existing scheme for terroristic threatening under our penal code. A terroristic threatening offense is elevated to the first degree when multiple victims are threatened, or a public servant is threatened, etc. See HRS section 707-716.

Thank you for the opportunity to comment on this bill.

/s/ Rebecca V. Like
Prosecuting Attorney
County of Kaua'i

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**DEPARTMENT OF THE PROSECUTING ATTORNEY
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**THE HONORABLE DAVID A. TARNAS, CHAIR
HOUSE COMMITTEE ON JUDICIARY AND HAWAIIAN AFFAIRS**

**Thirty-Second State Legislature
Regular Session of 2024
State of Hawai`i**

February 21, 2024

RE: H.B. 1664; RELATING TO CORRUPTION.

Chair Tarnas, Vice-Chair Takayama and members of the House Committee on Judiciary and Hawaiian Affairs, the Department of the Prosecuting Attorney of the City and County of Honolulu (“Department”) submits the following testimony in **opposition** to H.B. 1664,

The purpose of H.B. 1664 is to increase penalties for bribery from a Class B felony to a Class A felony, if:

- the offender was an elected or appointed official;
- the aggregate value involved exceeded \$20,000; or
- the offender commits 3 or more occurrences of bribery within a 3 year period.

While the Department appreciates the intent to increase potential penalties for these particular types of bribery, we strongly believe **these types of offenses should not be allowed to receive probation or suspension of sentence** (i.e. suspension of sentence means all or part of the sentence is put on “hold” indefinitely, while—or if—the defendant completes other portions of the sentence) as allowed by H.B. 1664.

Mandating mandatory prison time will increase the likelihood of defendants agreeing to cooperate with law enforcement at the time of arrest. It will help uncover additional wrongdoing and generate new cases by increasing the likelihood defendants will provide information on others who have taken bribes or violated the public trust in some way.

Right now, a defendant arrested by the Honolulu Police Department for a white collar crime like bribery who is being prosecuted in state court will assume, correctly, that he or she will receive probation if convicted. As such, he or she has no incentive to cooperate with law enforcement.

Given the years of scandal that have shaken the public's trust in Hawai'i's state and local government, the Department believes our state laws should be amended to reflect the egregious nature of offenses that severely betray the public's trust and/or manipulate the system to one's own benefit. While federal prosecutors have largely taken the lead in prosecuting incidents of state and local government misconduct, this is largely due to the greater effectiveness and severity of federal laws on the matter.

To better equip our county prosecutors with the tools to prosecute this type of corruption, the Department strongly believes our State laws must be strengthened and carry serious consequences.

To this end, the Department has submitted H.B. 1867 which is similar to H.B. 1664 **except** that it would make Class A bribery as described above a felony **without** the possibility of probation or suspension of sentence. The Department urges the House Committee on Judiciary and Hawaiian Affairs to consider H.B. 1867 or amend H.B. 1664 so those convicted of Class A bribery cannot avoid incarceration and will be incentivized to cooperate with law enforcement.

Thank you for this opportunity to testify on H.B. 1664.

HB-1664

Submitted on: 2/16/2024 10:48:52 AM

Testimony for JHA on 2/21/2024 2:00:00 PM

Submitted By	Organization	Testifier Position	Testify
Alex B.	Individual	Support	Written Testimony Only

Comments:

Support

HB-1664

Submitted on: 2/19/2024 8:50:37 AM

Testimony for JHA on 2/21/2024 2:00:00 PM

Submitted By	Organization	Testifier Position	Testify
lynne matusow	Individual	Support	Written Testimony Only

Comments:

I am in strong support. As what I think should be done to persons who commit these offenses is unprintable, I will just urge you to move this bill forward.

It appears Cullen and English are getting their terms reduced, implying there may soon be more indictments. We must clean up government and then keep government clean.

HB-1664

Submitted on: 2/19/2024 2:15:28 PM

Testimony for JHA on 2/21/2024 2:00:00 PM

Submitted By	Organization	Testifier Position	Testify
Gerard Silva	Individual	Support	Written Testimony Only

Comments:

They should also be KICKED OUT!!!!!!