

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

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

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



THOMAS J. BRADY
FIRST DEPUTY PROSECUTING ATTORNEY
HOPE MUA LOIO HO'OPI'I

THE HONORABLE CHRIS LEE, CHAIR
SENATE COMMITTEE ON TRANSPORTATION AND CULTURE AND THE ARTS
Thirty-Third State Legislature
Regular Session of 2025
State of Hawai'i

January 28, 2025

RE: S.B. 282; RELATING TO UNCREWED AIRCRAFT OFFENSES.

Chair Lee, Vice Chair Inouye, and members of the Senate Committee on Transportation and Culture and the Arts, the Department of the Prosecuting Attorney for the City and County of Honolulu submits the following testimony in **strong support** of S.B. 282. This bill is part of the Department's 2025 legislative package, and we thank you for hearing it.

S.B. 282 increases the penalty for the use of a drone to commit a felony from a Class C offense to a Class A offense. Drones are highly accessible, lightly regulated, and permit remote operations at long distances.¹ Across the United States, creative and malicious criminals have already employed drones to further a wide range of felonies. Hawai'i cannot be caught by flat-footed by this emerging technology.

RAND recently warned of the increasing use of drones to deliver dangerous contraband into prisons.² In California, drones have reportedly been used to case homes before burglaries.³ In North Carolina, a registered sex offender used a drone to evade legal restrictions on his access

¹ See Vanessa Swales, *Drones Used in Crime Fly Under the Law's Reach*, N.Y. TIMES (online), Nov. 3, 2019, available at <https://www.nytimes.com/2019/11/03/us/drones-crime.html> ("Drones pose novel and difficult problems for law enforcement. They are widely available, lightly regulated and can be flown remotely by an operator far away from the crime scene. They have already been put to a host of nefarious uses, from smuggling contraband into prisons to swarming F.B.I. agents who were preparing for a raid.").

² See Joe Russo, Dulani Woods, Michael J.D. Vermeer, & Brian A. Jackson, *Countering the Emerging Drone Threat to Correctional Security*, RAND CORPORATION, Mar. 13, 2024, available at https://www.rand.org/content/dam/rand/pubs/research_reports/RAA100/RAA108-21/RAND_RRA108-21.pdf

³ Aila Slisco, *California Burglars May Be Using a Drone in Recent Crime Spree: Sheriff*, NEWSWEEK (online), Nov. 26, 2024, available at <https://www.newsweek.com/california-burglars-may-using-drone-recent-crime-spree-sheriff-1992085>

to children.⁴ And in Pennsylvania last summer, Thomas Crooks used a drone to scout the fairgrounds before he shot President Trump.⁵

HRS § 711-1123(1)(g) currently provides that the use of a drone to commit a felony is a Class C offense. Under the *Modica* rule, where two crimes have exactly the same elements, but different sentences, the more lenient penalty applies.⁶ So by grading the use of a drone to commit a felony as a Class C offense, *all* felonies aggravated by the use of a drone receive a Class C sentence.

That means lighter sentencing even where the Legislature has specifically authorized stiffer penalties. For example, HRS § 711-1122(1)(c) makes it a Class B felony offense to commit second-degree assault with the use of a drone. But because second-degree assault is a felony and the use of a drone to commit a felony is a Class C offense, the lesser penalty controls.

S.B. 282 fixes this problem. By reclassifying the use of a drone in the commission of a felony as a Class A offense, it first provides a strong deterrent to criminal innovation with drones. And under the *Modica* rule, the Legislature could still designate a lighter sentence for specific felonies where it found a Class A sentence too harsh. To take the earlier example, if S.B. 282 passed, then HRS § 711-1122(1)(c) would become a Class B felony again—exactly as the statute says.

The Department strongly encourages this Committee to pass S.B. 282.

Thank you for the opportunity to testify.

⁴ Peter N. Borden, *The Peering Predator: Drone Technology Leaves Children Unprotected from Registered Sex Offenders*, 39 CAMPBELL L. REV. 167, 168-69 (2017).

⁵ Edward Helmore, *Gunman at Trump Rally Flew Drone Over Fairgrounds Earlier on Day of Shootings*, THE GUARDIAN (online), July 20, 2024, available at <https://www.theguardian.com/us-news/article/2024/jul/20/thomas-matthew-crooks-drone-trump>

⁶ *State v. Sasai*, 143 Hawai‘i 285, 295, 429 P.3d 1214, 1224 (2018) (“A defendant may not be convicted of an offense that carries a harsher penalty than another offense containing the same elements[.]”); *State v. Modica*, 58 Haw. 249, 250-51, 567 P.2d 420, 421-22 (1977).

COUNTY COUNCIL

Mel Rapozo, Chair
KipuKai Kualii, Vice Chair
Addison Bulosan
Bernard P. Carvalho, Jr.
Felicia Cowden
Fern Holland
Arryl Kaneshiro



OFFICE OF THE COUNTY CLERK

Jade K. Fountain-Tanigawa, County Clerk
Lyndon M. Yoshioka, Deputy County Clerk

Telephone: (808) 241-4188
Facsimile: (808) 241-6349
Email: cokcouncil@kauai.gov

Council Services Division
4396 Rice Street, Suite 209
Lihu'e, Kaua'i, Hawai'i 96766

January 27, 2025

**TESTIMONY OF ADDISON BULOSAN
COUNCILMEMBER, KAUAI COUNTY COUNCIL
ON**

SB 282, RELATING TO UNCREWED AIRCRAFT OFFENSES
Senate Committee on Transportation and Culture and the Arts

Thursday, January 30, 2025

3:00 p.m.

Conference Room 224

Via Videoconference

Dear Chair Lee and Members of the Committee:

Thank you for this opportunity to provide testimony in SUPPORT of SB 282, Relating to Uncrewed Aircraft Offenses. My testimony is submitted in my individual capacity as a member of the Kaua'i County Council.

I wholeheartedly support the intent of SB 282, which would greatly affect the Kaua'i community.

Thank you again for this opportunity to provide testimony in support of SB 282. Should you have any questions, please feel free to contact me or Council Services Staff at (808) 241-4188 or via email to cokcouncil@kauai.gov.

Sincerely,

ADDISON BULOSAN
Councilmember, Kaua'i County Council

AAO:dmc

JON N. IKENAGA
STATE PUBLIC DEFENDER

DEFENDER COUNCIL
1130 NORTH NIMITZ HIGHWAY
SUITE A-254
HONOLULU, HAWAI'I 96817

HONOLULU OFFICE
1130 NORTH NIMITZ HIGHWAY
SUITE A-254
HONOLULU, HAWAI'I 96817

APPELLATE DIVISION
TEL. NO. (808) 586-2080

DISTRICT COURT DIVISION
TEL. NO. (808) 586-2100

FAMILY COURT DIVISION
TEL. NO. (808) 586-2300

FELONY DIVISION
TEL. NO. (808) 586-2200

FACSIMILE
(808) 586-2222



STATE OF HAWAI'I
OFFICE OF THE PUBLIC DEFENDER



HAYLEY Y.C. CHENG
ASSISTANT PUBLIC DEFENDER

HILO OFFICE
275 PONAHAHAWAI STREET
SUITE 201
HILO, HAWAI'I 96720
TEL. NO. (808) 974-4571
FAX NO. (808) 974-4574

KONA OFFICE
75-1000 HENRY STREET
SUITE #209
KAILUA-KONA HI 96740
TEL. NO. (808) 327-4650
FAX NO. (808) 327-4651

KAUAI OFFICE
3060 EWA STREET
SUITE 206
LIHUE, HAWAI'I 96766
TEL. NO. (808) 241-7128
FAX NO. (808) 274-3422

MAUI OFFICE
81 N. MARKET STREET
WAILUKU, HAWAI'I 96793
TEL. NO. (808) 984-5018
FAX NO. (808) 984-5022

Testimony of the Office of the Public Defender to Senate Committee on Transportation and Culture and The Arts re:

SB 282 Relating to Uncrewed Aircraft Offense

Chair: Senator Chris Lee, Vice Chair: Senator Lorraine R. Inouye and Members of the Committee:

The Office of the Public Defender respectfully **opposes SB 282** for the following reasons:

SB 282 seeks to amend HRS section 711-1121 (1) by adding subsection (g) to read: "Uses an uncrewed aircraft in furtherance of the commission of a felony", and seeks to strike the exact same language from HRS section 711-1123 (1)(g). This simple change would make the use of an uncrewed aircraft in furtherance of the commission of a felony a class A felony (punishable by 20 years in prison). Currently, the use of an uncrewed aircraft in the furtherance of a felony is a class C felony (punishable by 5 years in prison). The Office of the Public Defender believes this to be a gross deviation from the fair application of the criminal law based on the conduct of an individual defendant.

Currently, if a person commits the offense of using a drone to aid in the furtherance of the commission of a felony, they face, in addition to the felony itself, another class C felony for the use of the drone. Thus, if a person uses a drone to possess a dangerous drug in a small amount (they hide their drug pipe in their drone), they face the possibility of 5 years in prison for the possession of the dangerous drug, and 5 years in prison for the use of the drone to aid in said possession. With the proposed change in the law sought by SB 282, the same person would face a 5 year prison term for possessing the same amount of a dangerous drug, but then also face a **20**

year prison term for simply using the drone to aid in said possession, without there being any greater harm to the community. This creates a gross unfairness in treatment, merely for using a drone, without any justification in the law, or need to prevent the use of drones in the community. The best analogy would be to state that a person who commits a class C felony while parked in a car, should then also be charged with a class A felony simply because they used a car to aid in the commission of said felony offense.

This change in the law would give to the prosecution an unfair bargaining chip in plea negotiations, wherein a defendant would have to be concerned about a 20 year sentence if they chose to have a trial for a simple Class C felony, simply because a drone was involved.

Thank you for the opportunity to comment upon this measure.