

STATE OF HAWAI‘I
OFFICE OF THE PUBLIC DEFENDER

**Testimony of the Office of the Public Defender,
State of Hawai‘i to the House Committee on
Consumer Protection & Commerce**

February 2, 2022

H.B. No. 1486: RELATING TO THEFT

Chair Aaron Ling Johanson, Vice Chair Lisa Kitagawa and Members of the Committee:

The Office of the Public Defender respectfully opposes H.B. No. 1486, which would amend HRS § 708-830.5 to add theft of a motor vehicle as defined under section 291C-1 of the Hawai‘i Revised Statutes to the crime of Theft in the First Degree. The bill also adds “motorcycles and motor scooters” to be included in the amended statute. As it currently stands, the majority of motor vehicle theft is prosecuted as a class C felony offense punishable by up to five years in prison and/or a \$10,000 fine, as most vehicles are valued at \$750 or above. The proposed amendment to the Theft in the First Degree statute would make motor vehicle theft a class B level felony offense punishable by up to ten years in prison and/or a \$20,000 fine. Thus, H.B. 1486 is strictly a punitive measure that seeks to double the maximum prison term for motor vehicle theft from five years to ten years.

We want to stress that this bill will have no effect on deterring auto theft. The idea that the existence of a particular criminal offense serves as a deterrent to criminal activity has long been rejected. Those who engage in criminal conduct do not stop to weigh the judicial consequences of their actions. Our current penal code adequately addresses different scenarios commonly involved in auto theft. Carjacking is prosecuted as either Robbery in the First Degree (20-year maximum prison term) or Robbery in the Second Degree (10-year maximum prison term) under HRS § § 708-840 and 708-841(1). Unauthorized Control of a Propelled Vehicle in the First Degree under § 708-836 (operating a stolen vehicle) and Unauthorized Entry into Motor Vehicle in the First Degree (breaking and entering into a vehicle with intent to steal) under § 708-836.5 are both punishable by up to five years in prison.

This proposed legislation is also overly broad in that theft of a “motor vehicle” stands to include “motorcycles and motor scooters”. The definition of “motor scooter”

would include any electric or gas scooter with a handlebar and seat attachment regardless of value.¹ Thus, almost *any* type of two-wheeled, self-propelled vehicle, could potentially be covered under this definition. In today's era of modern advancements and affordable technology, this could include a myriad of lithium powered electric gadgets with wheels.

If the legislature is inclined to pass this amendment, it needs to consider that our correctional facilities will quickly become more overcrowded and the burden on our already limited social services will grow exponentially. Our jails and prisons are filled above not only design capacity but also operational capacity. A significant portion of the State's prison population are incarcerated in a contracted private, for-profit prison in Arizona; they are exiled thousands of miles away from their families, friends, and crucial support networks. According to a recent study by the Prison Policy Initiative, in 2018, Hawai'i had an incarceration rate of 487 per 100,000 people.² Although Hawai'i ranked 37th among the 50 states, if every state was an independent nation, Hawai'i would have the 43rd highest incarceration rate in the world.³ Only three foreign countries have a higher incarceration rate than Hawai'i.⁴ Thus, Hawai'i locks up a higher percentage of its people than many wealthy democracies do.⁵ With the recent nationwide review of criminal justice policies, it is concerning that the trend in the State of Hawai'i is to increase penalties.

¹ HRS 291C-1: "Motor scooter: means:

- (1) Every motor vehicle that has a handlebar and seating that requires the operator to straddle or sit astride on it and is designed to travel on no more than three wheels in contact with the ground, but excludes a farm tractor; or
- (2) Every motor vehicle that has a steering wheel and seating that does not require the operator to straddle or sit astride on it, and is designed to travel on three wheels in contact with the ground, called an auticycle, which is certified by the manufacturer to comply with all applicable Federal Motor Vehicle Safety Standards as of the date of manufacture, with a motor that produces no more than five horsepower, but excludes a moped.

² Prison Policy Initiative, "Hawaii profile." See <https://www.prisonpolicy.org/profiles/HI.html>

³ Prison Policy Initiative, "States of Incarceration: The Global Context." See <https://www.prisonpolicy.org/global/2018.html>

⁴ Id.

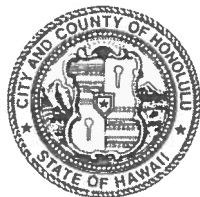
⁵ Prison Policy Initiative, "Hawaii profile." See <https://www.prisonpolicy.org/profiles/HI.html>

In conclusion, the proposed bill does nothing to deter motor vehicle theft, is a purely punitive measure, and is simply not necessary. As noted above, our penal code is adequately structured to cover a multitude of motor vehicle theft-related scenarios. What this bill will have an effect on doing is exacerbating our already overcrowded jail facilities and further clog our judicial system.

Thank you for the opportunity to comment on this measure.

POLICE DEPARTMENT
CITY AND COUNTY OF HONOLULU

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RICK BLANGIARDI
MAYOR

RADE K. VANIC
INTERIM CHIEF

OUR REFERENCE

JH-KK

February 2, 2022

The Honorable Aaron Ling Johanson, Chair
and Members
Committee on Consumer Protection
and Commerce
House of Representatives
Hawaii State Capitol
415 South Beretania Street, Room 329
Honolulu, Hawaii 96813

Dear Chair Johanson and Members:

SUBJECT: House Bill No. 1486, Relating to Theft

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

The HPD supports House Bill No. 1486, Relating to Theft.

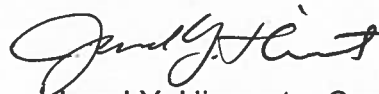
Currently, when a suspect is arrested for a stolen vehicle, they are charged with Section 708-836, Unauthorized Control of a Propelled Vehicle in the First Degree of the Hawaii Revised Statutes (HRS) or Section 708-836.1, Unauthorized Control of a Propelled Vehicle in the Second Degree, HRS. However, the suspect has to have control of the vehicle to be charged with these violations. Simply being in possession of or having access to the stolen vehicle is insufficient to sustain a charge of theft of a vehicle. Amending the offense of Theft in the First Degree to include the theft of a motor vehicle will enhance law enforcement's capabilities to arrest and charge a suspect for this violation.

One area of concern is the language under Section 291C-1, Definitions, HRS, where the definition of a "motor vehicle" excludes mopeds. The exclusion of a moped will need to be addressed by the legislative body, as it leaves a gray area where law enforcement and the prosecution will have difficulty resolving this issue in a court of law.

The Honorable Aaron Ling Johanson, Chair
and Members
February 2, 2022
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The HPD urges you to support House Bill No. 1486, Relating to Theft, and we appreciate the committee's consideration of our concern. Thank you for the opportunity to testify.

Sincerely,



Jarod Y. Hiramoto, Captain
Criminal Investigation Division

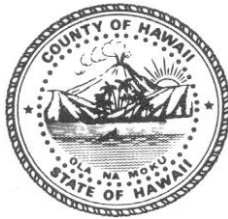
APPROVED:



Rade K. Vanic
Interim Chief of Police

KELDEN B.A. WALTJEN
PROSECUTING ATTORNEY

STEPHEN L. FRYE
FIRST DEPUTY
PROSECUTING ATTORNEY



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OFFICE OF THE PROSECUTING ATTORNEY

TESTIMONY IN SUPPORT OF HOUSE BILL 1486

A BILL FOR AN ACT RELATING
TO THEFT IN THE FIRST DEGREE; MOTOR VEHICLES

COMMITTEE ON
CONSUMER PROTECTION & COMMERCE
Representative Aaron Ling Johanson, Chair
Representative Lisa Kitagawa, Vice Chair

Wednesday, February 2, 2022 at 2:00 p.m.
Via Videoconference
State Capitol Conference Room 329
415 South Beretania Street

Honorable Chair Johanson, Vice-Chair Kitagawa and Members of the Committee on Consumer Protection & Commerce. The County of Hawai'i, Office of the Prosecuting Attorney submits the following testimony in strong support of House Bill 1486.

This bill was drafted to establish Theft of a Motor Vehicle as a subsection of Theft in the First Degree. Currently, most motor vehicle thefts are prosecuted as Theft in the Second Degree and/or Unauthorized Control of Propelled Vehicle in the First Degree, both of which are class C felony offenses. By increasing the penalty to a class B felony offense, we promote respect for the law, ensure that offenders receive an appropriate sentence that reflects the seriousness of the offense, provide adequate deterrence for future criminal activity, and protect the public.

Hawai'i Island is composed of rural communities, with limited mass public transit accommodations to service the needs of our residents. As a result, citizens rely heavily upon personal vehicles for their daily transportation, livelihoods, and to support their families. Victims of motor vehicle theft often share the hardships incurred as a result of losing their sole means of transportation. In addition, these motor vehicles often times contain personal property including but not limited to work related tool and trade equipment, child safety equipment (car seats, strollers, etc.), money, mobile electronic devices, and confidential and personal information, which may subject the victim to additional crimes and/or vulnerability.

Over the past year, our Office has met with community groups, local government leaders, law enforcement officials, and members of the public about their concerns and interests regarding the criminal justice system. Given recent crime trends and in consideration of the criminal matters that are handled by our Office, we collected data through an online survey in hopes of addressing our community's concerns and prioritizing the safety and well-being of Hawai'i Island residents. A total of 1,422 individuals participated in our online legislative

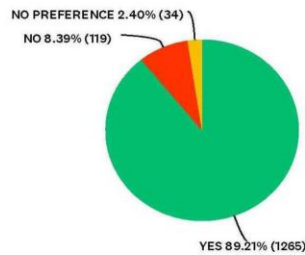
initiatives survey, which ran from December 9, 2021 through December 30, 2021. Of those 1,422 participants, 1,265 or 89.21% of those surveyed, supported establishing Theft of a Motor Vehicle as a class B felony offense. Please see the graph below for more information.



OFFICE OF THE PROSECUTING ATTORNEY LEGISLATIVE INITIATIVES SURVEY

Q2 Do you support creation of a grand theft auto offense (Theft of a Motor Vehicle or Motorcycle) which increases the maximum penalty from a five (5) year prison term to a ten (10) year prison term?

Answered: 1,418 Skipped: 4



ANSWER CHOICES	RESPONSES
YES	89.21% 1,265
NO	8.39% 119
NO PREFERENCE	2.40% 34
TOTAL	1,418

BACKGROUND

Currently most car thefts are prosecuted under the offenses of Unauthorized Control of a Propelled Vehicle in the First Degree (operating a vehicle or changing the vehicle's identity without the owner's consent) and Theft in the Second Degree (theft of property which exceeds \$750 in value), both of which are only class C felony offenses, and carry a maximum penalty of five (5) years in prison. In order to prosecute a felony theft as a class B felony, the stolen property in question (a motor vehicle or motorcycle) would have to be valued at an amount greater than \$20,000.

Under HRS 708-830.5, Theft in the First Degree is a class B felony offense and carries a maximum penalty of ten (10) years in prison.

PROSECUTORS PROPOSAL

The Office of the Prosecuting Attorney proposes establishing "Theft of a Motor Vehicle and/or Motorcycle" as a subsection of Theft in the First Degree to eliminate the need to provide an estimated value of a vehicle or motorcycle in order to prosecute a class B felony theft. Furthermore, by increasing the maximum penalty, we promote respect for the law, ensure that offenders receive an appropriate sentence that reflects the seriousness of the offense, provide adequate deterrence for future criminal activity, and protect the public.



The County of Hawai'i, Office of the Prosecuting Attorney remains committed to the pursuit of justice with integrity and commitment.

For the foregoing reasons, the, County of Hawai'i, Office of the Prosecuting Attorney strongly supports the passage of House Bill No. 1486. Thank you for the opportunity to testify on this matter.

HB-1486

Submitted on: 2/1/2022 7:36:52 AM

Testimony for CPC on 2/2/2022 2:00:00 PM

Submitted By	Organization	Testifier Position	Remote Testimony Requested
Allen Bartolome	Individual	Support	No

Comments:

I support the passing of this bill

HB-1486

Submitted on: 2/1/2022 9:21:04 AM

Testimony for CPC on 2/2/2022 2:00:00 PM

Submitted By	Organization	Testifier Position	Remote Testimony Requested
John Begg	Individual	Support	No

Comments:

I support Representative Ilagan's efforts to control vehicle thefts in Hawaii.

HB-1486

Submitted on: 2/1/2022 12:22:31 PM

Testimony for CPC on 2/2/2022 2:00:00 PM

Submitted By	Organization	Testifier Position	Remote Testimony Requested
TK Wehrsig	Individual	Support	No

Comments:

Aloha,

My name is TK Wehrsig. I am the creator/Admin of the largest Crimefighting and information sharing Group for the Island of Hawai‘i. Our group currently has over 70K members and is the premier source for information and discussion on our island. This gives me a great insight into the feelings and opinions of the community of the island.

I am also in the running for County Council for District 2. To try and further drive the change that our island wants to see. For the past few 7 years, I have fought to make and keep our island as safe, preserved, and as beautiful as possible for all who live and visit. I am testifying today as I feel this is a step in that direction.

HB1486: I have watched as my home island has changed. Some months we have cars stolen almost every day. People hear about the Criminal but never the person whose car was stolen Not everyone can afford to full insurance. It is not their vehicle that is being stolen. It is their lives. It's how they get to work to bring value to the community they live in, Provide food for their families. It's how they get their kids to school, doctor's appointments, sports, and other activities. Often the ones who live this way must live at a great distance from these places. And they are trying to survive and be the best parents they can be. These are the students who are going to college to get educated to fill the positions of the community so that it is not all sourced out. And then a person that brings no value to their community as well as has nothing to lose under the current laws comes along and takes all that away from them. These are the ripple effect of one person's selfish decisions. And what are the repercussions for this person? Near nothing, Criminals laugh at the current charges and exchange information on how to beat the case. Defense lawyers use cookie-cutter defenses to get these people off. And if they do get charged. They are out before serving a portion of their sentence. Why is there so much empathy for the criminal and never the victim? Here is a chance to side with the ones who work to support the government and vote for us to protect them. Let us make the right decision. I speak for the victims when I say “WE” support this Bill.

LATE

Email Testimony for HB1486

ilagan2 - Nicole <ilagan2@capitol.hawaii.gov>

Tue 2/1/2022 2:29 PM

To: kitagawa3 - Sarah-Lyn <kitagawa3@capitol.hawaii.gov>

From: Rep. Greggor Ilagan <repilagan@capitol.hawaii.gov>

Sent: Tuesday, February 1, 2022 1:42 PM

To: ilagan2 - Nicole <ilagan2@capitol.hawaii.gov>

Subject: FW: URGENT: Your testimony on abandoned vehicles and auto theft is needed by 4pm today

From: Sky <auntiesky808@gmail.com>

Sent: Tuesday, February 1, 2022 1:38 PM

To: Rep. Greggor Ilagan <repilagan@capitol.hawaii.gov>

Subject: Re: URGENT: Your testimony on abandoned vehicles and auto theft is needed by 4pm today

CAUTION: This email originated from outside of the organization. Do not click links or open attachments unless you recognize the sender and know the content is safe.

Well, neither tech support nor library are able to verify my new account, so I would like get testimony to committee through Representative's office since this is taking way too much time.

HB1412. Support this bill because specific times and distance of moving abandoned vehicles will help law enforcement remove these vehicles more efficiently.

HB1413 Support this bill because vehicles should not be abandoned as reason for avoiding fines or fees leaving burden on taxpayers.

HB 1486 Support because in these difficult times, especially, vehicle theft may keep someone from job, school, or medical treatment therefore such theft should carry stiff penalties as a discouragement.

Margaret Goodheart

PO Box 492678

Kea'au Hawaii

Thank you, Office to assist with testimony.

Aloha,

Sky Torigoe Goodheart

On Tue, Feb 1, 2022, 12:45 PM Sky <auntiesky808@gmail.com> wrote:

Fyi

Gregor is asking for testimony from us as you can see below.

----- Forwarded message -----

From: Rep. Greggor Ilagan <aloha@repilagan.com>

Date: Tue, Feb 1, 2022, 9:34 AM

Subject: URGENT: Your testimony on abandoned vehicles and auto theft is needed by 4pm today

To: Sky Goodheart <auntiesky808@gmail.com>

HB-1486

Submitted on: 2/1/2022 3:48:37 PM

Testimony for CPC on 2/2/2022 2:00:00 PM

Submitted By	Organization	Testifier Position	Remote Testimony Requested
bob ernst	Individual	Support	No

Comments:

Aloha Representatives,

Please support and vote for HB1486 so as to address the plague of auto theft.

Mahalo,

Bob Ernst

HB-1486

Submitted on: 2/2/2022 1:02:09 PM

Testimony for CPC on 2/2/2022 2:00:00 PM

Submitted By	Organization	Testifier Position	Remote Testimony Requested
Gerard Silva	Individual	Support	No

Comments:

We need something that will lock these people up for a long time. The way it is now they are right back out stealing cars again as soon as the judge lets them out. This is a nother problem!!