

HB-711-HD-1

Submitted on: 3/13/2023 2:26:31 PM

Testimony for JDC on 3/16/2023 10:30:00 AM

Submitted By	Organization	Testifier Position	Testify
Daniel Foley	Testifying for Commission to Improve Standards of Conduct	Support	Remotely Via Zoom

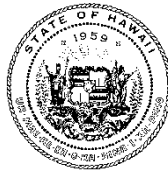
Comments:

Dear Mr. Chairman and members of the Senate Judiciary Committee,

As Chair of the Commission to Improve Standards of Conduct, I support HB 711, HD 1, that would make it a class B felony for a person to obtain financial benefit or other gain by means of false statement, misrepresentation, concealment of important information or deception. See Commission's December 1, 2022 Final Report at page 20.

The House made the same amendments to this bill as it did to HB 707, HD 1, on false claims, regarding sentencing, qualifications and public financing for elective office. I support the bill as amended.

Mahalo, Judge Daniel Foley (ret.)



STATE OF HAWAII
CAMPAIGN SPENDING COMMISSION

235 SOUTH BERETANIA STREET, ROOM 300
HONOLULU, HAWAII 96813

March 14, 2023

TO: The Honorable Karl Rhoads, Chair
Senate Committee on Judiciary

The Honorable Mike Gabbard, Vice Chair
Senate Committee on Judiciary

Members of the Senate Committee on Judiciary

FROM: Kristin Izumi-Nitao, Executive Director
Campaign Spending Commission

SUBJECT: **Testimony on H.B. No. 711, HD1, Relating to Fraud.**

Thursday, March 16, 2023
10:30 a.m., Conference Room 016 & Videoconference

Thank you for the opportunity to testify on this bill. The Campaign Spending Commission ("Commission") supports this bill.

This bill adds a new section to Chapter 708, Hawaii Revised Statutes ("HRS"), to establish the criminal offense of fraud (including the deprivation of the right of honest services) as a class B felony. The original bill made a person charged under this new section ineligible for a deferred acceptance of guilty or nolo contendere plea and disqualified a person convicted under this new section from holding elective public office for a period of ten years. The original bill also provided a minimum mandatory sentence of one year. HD 1 allows a person charged under this new section to be eligible for a deferred acceptance of guilty or nolo contendere plea and changed the ban on holding public elective office for ten years to a ban on receiving public financing for elections. HD 1 also deleted the minimum mandatory sentence. The Commission believes that the original bill would be more effective in deterring criminal conduct, however, the Commission also believes that establishing the new crime is more important at this time.

This new offense is modeled after federal law. The Commission supports the enhancement of criminal penalties for offenses involving public corruption. If enforced, the Commission believes that criminal penalties are the most effective remedies to deter public corruption.

The Commission requests that this Committee pass this bill.



**TESTIMONY OF
THE DEPARTMENT OF THE ATTORNEY GENERAL
KA 'OIHANA O KA LOIO KUHINA
THIRTY-SECOND LEGISLATURE, 2023**

ON THE FOLLOWING MEASURE:
H.B. NO. 711, H.D. 1, RELATING TO FRAUD.

BEFORE THE:
SENATE COMMITTEE ON JUDICIARY

DATE: Thursday, March 16, 2023 **TIME:** 10:30 a.m.

LOCATION: State Capitol, Room 016

TESTIFIER(S): Anne E. Lopez, Attorney General, or
Cheuk Fu Lui, Deputy Attorney General

Chair Rhoads and Members of the Committee:

The Department of the Attorney General supports this bill and provides the following comments.

The purpose of this bill is to create a criminal offense of fraud, based on 18 United States Code sections 1341, 1343, 1344, and 1346, and is intended to criminalize conduct that is currently punishable at the federal level but not the state or local level.

Currently, the Hawaii Revised Statutes (HRS) grades theft offenses based on specific monetary thresholds. In many situations, however, it is challenging for law enforcement to determine the specific value stolen by an offender using a fraudulent scheme. As a result, there are substantial barriers in charging some known offenders with felony offenses. For instance, in *State v. Atwood*, 129 Hawai'i 414 (2013), an unlicensed contractor misrepresented his license status and entered into a home remodeling contract fraudulently. The Supreme Court of Hawaii held that the prosecution lacked probable cause to charge the defendant, because the defendant intended to perform and did perform the contracted work despite the misrepresentation. The Court further held that the prosecution failed to provide a specific amount of property that was deprived as there was no showing that any money obtained by the defendant was not in exchange for the contracted work. This bill would enable law enforcement to prosecute fraud and avoid the *Atwood* problem altogether by not requiring the prosecution to prove a specific amount stolen. Instead, the bill establishes

a class B felony offense, regardless of the amount, for engaging in conduct to falsely or fraudulently obtain money or property.

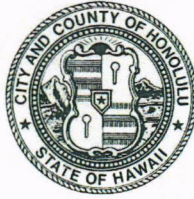
Upon review of House Draft 1, we believe further amendment is needed to ensure that the bill achieves its stated purpose and objective. The original draft of the bill precluded persons charged under this offense from seeking a deferred acceptance of a plea by imposing a mandatory minimum term of imprisonment. The new section being added to part IV of chapter 708, HRS, by section 2 of the bill was amended in House Draft 1 to remove the mandatory minimum provision and allow the seeking of a deferred acceptance of a plea by adding a new provision that reads, "A person charged under this section shall be eligible for a deferred acceptance of guilty plea or nolo contendere plea under chapter 853." Page 4, lines 4-6. Under section 853-4, HRS, there are multiple factors in determining whether a person is eligible to seek a deferred acceptance. However, the present wording can be argued to mean that any person is eligible regardless of the factors enumerated in section 853-4. Removing the sentence in its entirety will achieve the intended purpose of allowing an *eligible* person to seek a deferred acceptance pursuant to section 853-4. Accordingly, we recommend that subsection (4) of the new section being added to chapter 708, HRS, in section 2 of the bill be amended at page 4, lines 4-9, as follows:

(4) Fraud is a class B felony. [~~A person charged under this section shall be eligible for a deferred acceptance of guilty plea or nolo contendere plea under chapter 853.~~] A person who is convicted under this section shall be disqualified from receiving public financing under part XIII, subpart J₁ of chapter 11 for a period of ten years from the date of conviction.

Thank you for the opportunity to testify.

POLICE DEPARTMENT
CITY AND COUNTY OF HONOLULU

801 SOUTH BERETANIA STREET · HONOLULU, HAWAII 96813
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RICK BLANGIARDI
MAYOR

ARTHUR J. LOGAN
CHIEF

KEITH K. HORIKAWA
RADE K. VANIC
DEPUTY CHIEFS

OUR REFERENCE PB-MS

March 16, 2023

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

Dear Chair Rhoads and Members:

SUBJECT: House Bill No. 711, H.D. 1, Relating to Fraud

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

The HPD supports House Bill No. 711, H.D. 1, Relating to Fraud.

Deterring fraud is paramount in ensuring the proper allocation of resources and the enhancement of economic prosperity. Fraud can cause irreversible impacts to the victim and their community. This measure will strengthen the HPD's ability to combat fraudulent schemes or artifices.

The HPD urges you to support House Bill No. 711, H.D. 1, Relating to Fraud.

Thank you for the opportunity to testify.

APPROVED:

Sincerely,

A handwritten signature in black ink, appearing to read "Arthur J. Logan", is written over a horizontal line.

Arthur J. Logan
Chief of Police

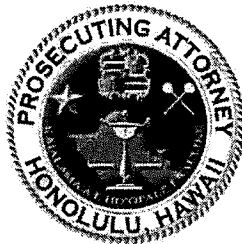
A handwritten signature in black ink, appearing to read "Parker Bode", is written in a cursive style.

Parker Bode, Captain
Criminal Investigation Division

DEPARTMENT OF THE PROSECUTING ATTORNEY
CITY AND COUNTY OF HONOLULU

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

STEVEN S. ALM
PROSECUTING ATTORNEY



THOMAS J. BRADY
FIRST DEPUTY
PROSECUTING ATTORNEY

THE HONORABLE KARL RHOADS, CHAIR
SENATE COMMITTEE ON JUDICIARY
Thirty-Second State Legislature
Regular Session of 2023
State of Hawai'i

March 16, 2023

RE: H.B. 711, H.D. 1; RELATING TO FRAUD.

Chair Rhoads, Vice Chair Gabbard, and members of the Senate Committee on Judiciary, the Department of the Prosecuting Attorney, City and County of Honolulu (“Department”), submits the following testimony in **support** of H.B. 711, H. D. 1, with **suggested amendments**.

The purpose of H.B. 711, H.D. 1, is to establish a new criminal offense under state law, that would mirror a similar statute currently used under federal law, to prohibit any scheme or artifice to deprive another of the intangible right of honest services, or obtain money or property by means of false or fraudulent pretenses, representations or promises. In the federal legal system, this is primarily used to address public corruption, but it has also been used in limited instances to address fraud in private corporations as well.

While the Department appreciates the intent of the prior committee, we believe the **mandatory minimum term of one year imprisonment is a key deterrent for this offense**, and is still much less stringent than federal sentences for the same type of offense. Without any mandatory imprisonment, it is highly likely that all of these offenders would be sentenced to probation, and if deferred acceptance of guilty or nolo contendere is also allowed, this could eventually result in the case(s) being wiped from the offender’s record altogether, almost as if it never happened. Notably, the proposed offense could only be committed if the offender acted intentionally and with “intent to defraud”; it would not be possible for someone to be convicted of this offense if their level of culpability was merely knowing, reckless or negligent.

Given the years of scandal that have shaken the public’s trust in Hawaii’s state and local government, the Department believes our state laws should be amended to reflect the egregious nature of certain offenses—such as fraud—that further 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. As such, we respectfully **ask that that word “not” be re-inserted on p. 4, ln. 5**, to read: “...this section shall not be eligible for a deferred acceptance...”

If the Committee still wishes to give potential offenders the opportunity to qualify for deferred acceptance of guilty or nolo contendere plea, despite the fact that this would allow the case to be dismissed after the deferral period, the Committee may want to delete the relevant sentence (i.e. “A person charged under this section shall be eligible for a deferred acceptance of guilty plea or nolo contendere plea under chapter 853.” at p. 4, lns. 4-6) from the bill entirely. HRS Chapter 853 already provides eligibility criteria and procedures for deferral, and no additional reference is needed. Also, this sentence could be interpreted to mean that all of these offenders are mandated to be eligible for deferral (despite the criteria in Chapter 853), and we do not believe that is the intent.

Looking to the proposed statute’s origins in federal law, the Department respectfully **suggests that subsection (2) of the proposed offense be deleted (see p. 3, lns. 19-21)**, as it would be unprecedented, and potentially very confusing and problematic, for the interpretation of one of our state statutes to be entirely reliant on federal caselaw. Because Section 1 of the bill already notes that State courts and counsel “should look to federal case law and precedent for direction” (p. 3, lns. 6-7), we believe that language alone provides sufficient and appropriate guidance for everyone involved, without conflating state and federal law.

Every day, thousands of dedicated government workers serve the public diligently and honorably, and their hard work and good reputation should not be marred by those who would selfishly seek their own ends. With the amendments suggested above, the Department believes that H.B. 707, H.D. 1, would appropriately address this type of public corruption, and allow our county prosecutors to reasonably pursue prosecution of these matters.

For all of the foregoing reasons, the Department of the Prosecuting Attorney of the City and County of Honolulu **supports** the passage of H.B. 711, H.D. 1, with **suggested amendments**. Thank you for the opportunity to testify on this matter.

HB-711-HD-1

Submitted on: 3/13/2023 3:17:47 PM

Testimony for JDC on 3/16/2023 10:30:00 AM

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

Comments:

This is another very important bill whose genesis was in the Commission to Improve Standards of Conduct. It gets across the message that crime does not pay.

Please pass/

HB-711-HD-1

Submitted on: 3/15/2023 2:54:24 PM

Testimony for JDC on 3/16/2023 10:30:00 AM

Submitted By	Organization	Testifier Position	Testify
Diane Ware	Individual	Support	Written Testimony Only

Comments:

Dear Legislators this bill is a no brainer to stem corruption and uphold ethics and trust in government.

Mahalo for acting pono by passing this bill.

Respectfully submitted from the Moku o Ka'u

HB-711-HD-1

Submitted on: 3/15/2023 5:57:35 PM

Testimony for JDC on 3/16/2023 10:30:00 AM

Submitted By	Organization	Testifier Position	Testify
Dara Carlin, M.A.	Individual	Support	Written Testimony Only

Comments:

Stand in Support