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THE HONORABLE LORRAINE R. INOUE , CHAIR
SENATE COMMITTEE ON TRANSPORTAION
Thirty-Third State Legislature
Regular Session of 2026
State of Hawai`i

March 12, 2026

RE: H.B. 389, H.D. 1; RELATING TO UNCREWED AIRCRAFT OFFENSES.

Chair Inouye, Vice-Chair Elefante, and members of the Senate Committee on Transportation, the Department of the Prosecuting Attorney of the City and County of Honolulu (“Department”) submits the following testimony in **support** of H.B. 389, H.D. 1 **with a recommended amendment**. This bill was originally part of the Department’s 2025 legislative package, and we thank the Committee for hearing it.

Criminal drone use is an emerging threat in the United States.¹ Drones have reportedly been used to smuggle contraband into prisons,² case homes before burglaries,³ and evade sex-offender monitoring.⁴ Some accounts indicate cartel operatives have even sought direct combat experience using drones in Ukraine.⁵ So the risk to public safety is real and rising.

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/RRA100/RRA108-21/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>.

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 Stephen Honan, *Drug Cartels Are Adopting Cutting-Edge Drone Technology. Here’s How the US Must Adapt*, THE ATLANTIC COUNCIL (online), Sept. 29, 2025, available at

In 2024, this Legislature anticipated that challenge by passing Act 161, which defines various offenses with drones (uncrewed aircraft). But the current law contains one major loophole. HRS § 711-1123(1)(g) currently makes it a Class C felony to use a drone to commit a felony. Under the *Modica* rule, where two crimes have exactly the same elements, but different sentences, the more lenient penalty applies.⁶

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

The Department originally proposed reclassifying the use of a drone in the commission of a felony as a Class A offense. The House Judiciary and Hawaiian Affairs Committee took a different tack, addressing the *Modica* consideration directly through exemption. That works too.

We would only suggest adding one more sentence to subsection (1)(g), beginning at page 3, line 2:

“A conviction and sentence under this subsection shall be in addition to and not in lieu of any conviction and sentence for the separate felony; provided that the sentence imposed under this section may run concurrently or consecutively with the sentence for the separate felony.”

This anti-merger provision mirrors the statute criminalizing use of a firearm in the commission of a separate felony.⁷ When a criminal uses a gun in an armed robbery, the law allows separate convictions for the robbery and the felonious use of a firearm. The recommended amendment would allow similar treatment of an armed robber who used a drone instead. It would avoid any *Modica* issues and assist the prosecution of felonies committed with a drone.

Mahalo for the opportunity to testify.

<https://www.atlanticcouncil.org/blogs/new-atlanticist/drug-cartels-are-adopting-cutting-edge-drone-technology-heres-how-the-us-must-adapt/>.

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).

⁷ See HRS § 134-21(b).