

**Revised Testimony of the Office of the Public Defender,
State of Hawaii to the Senate Committee on
Judiciary and Labor**

February 23, 2015

S.B. No. 569: RELATING TO THEFT

Chair Keith-Agaran and Members of the Committee:

S.B. No. 569 would increase the dollar threshold level for felony theft from the current \$300 to \$400. We support this bill because it would eliminate, as felonies, cases where value of the property taken is less than \$400.

The rise in prices of all consumer items has resulted in the threshold amount for felony theft being very low. 1986 was the last time the threshold amount was raised when it went from \$200 to the current \$300. (1986 Session laws of Hawaii, Act 314). The raising of the level would not prevent the courts from imposing prison terms for theft. Even if treated as a misdemeanor, an offender could receive up to a one-year term of prison. In reality, very few felony theft offenders, unless they have a prior felony conviction, receive the possible five-year jail term. The vast majority of these cases are currently resolved by placing the offender on either a deferred acceptance of plea, or probation.

Thank you for the opportunity to comment on this bill.

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THE HONORABLE GILBERT S.C. KEITH-AGARAN, CHAIR
SENATE COMMITTEE ON JUDICIARY AND LABOR
Twenty-Eighth State Legislature
Regular Session of 2015
State of Hawai`i

February 23, 2015

RE: S.B. 569; RELATING TO THEFT.

Chair Keith-Agaran, Vice Chair Shimabukuro and members of the Senate Committee on Judiciary and Labor, the Department of the Prosecuting Attorney of the City and County of Honolulu submits the following testimony in opposition of S.B. 569.

The purpose of this bill is to amend the offense of Theft in the Second Degree under section 708-831 of the HRS to increase the amount an offender can steal property or services from an excess of \$300 to an excess of \$400. Theft in the Second Degree is a class C felony. We oppose allowing offenders to steal products or services of a higher value under Theft in the Second Degree. Offenders often steal products or services just under the value that can be charged as a felony so they can remain in the misdemeanor offense if arrested and charged. If this bill passes, more offenders will steal more – up to \$400 in value knowing that they will only be charged a misdemeanor. Such a policy will not help our goals in preventing theft, but instead will hurt families and businesses.

For the foregoing reasons, the Department of the Prosecuting Attorney of the City and County of Honolulu opposes the passage of S.B. 569. Thank you for the opportunity to testify on this matter.



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TO:
COMMITTEE ON JUDICIARY AND LABOR
Senator Gilbert S.C. Keith-Agaran, Chair
Senator Maile S.L. Shimabukuro, Vice Chair

FROM: HAWAII FOOD INDUSTRY ASSOCIATION
Lauren Zirbel, Executive Director

DATE: February 23, 2015
TIME: 9am
PLACE: Conference Room 16

RE: SB569

Position: Oppose

The Hawaii Food Industry Association is comprised of two hundred member companies representing retailers, suppliers, producers, and distributors of food and beverage related products in the State of Hawaii.

HFIA strongly opposes increasing the threshold property and services valuation for theft in the second degree.

This kind of increase will only encourage theft and make it more difficult for retailers to discourage crime. The National Retail Federation estimates that the value of merchandise lost to theft is over 1% of annual sales. If we apply that same percentage to retail sales in Hawaii (\$24.3 billion in 2010), the loss to theft is more than \$240 million.

Increasing the threshold value by over 30% is basically just saying thieves can steal over 30% more without fear of serious consequences. Our Loss Prevention professionals report that there are chronic shoplifters, some with dozens of arrests or more, these professional shoplifters know the system and actually calculate the value of the merchandise they are stealing to keep under the \$300 amount to avoid prosecution and serious penalties. In these cases the retailer is never compensated and has absolutely no hope of recovery. For a small business, a loss of almost 1% of sales is huge.

It is also important to understand that food retailers, small and large, operate at a profit margin of around 1%, any loss to theft has to offset at least in part if these businesses are to stay open. The only way to do that is to increase prices. Shoplifting is not a victimless crime against, "big corporations" it is a crime against real people and real businesses in our communities, and it negatively affects all of us.

We should also note that this measure is not limited to shoplifting; we must remember that it applies to

individuals as well. Having \$300 worth of personal property stolen is already a tremendous loss, which for most of us means the loss of many hours worked and savings accumulated. Increasing it to \$400 leaves individuals open to even greater loss.

This bill is bad for businesses, bad for customers, bad for individuals, and bad for Hawaii. The only people this bill seems that it would benefit are thieves. We strongly encourage you to vote no on this measure.

Thank you for the opportunity to testify.

COMMUNITY ALLIANCE ON PRISONS

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COMMITTEE ON JUDICIARY and LABOR

Chair: Sen. Gil Keith-Agaran

Vice Chair: Sen. Maile Shimabukuro

Monday, February 23, 2015

9:00 a.m.

Room 016

SUPPORT SB 569 with AMENDMENT = RAISING THE THEFT THRESHOLD

Aloha Chair Keith-Agaran, Vice Chair Shimabukuro and Members of the Committee!

My name is Kat Brady and I am the Coordinator of Community Alliance on Prisons, a community initiative promoting smart justice policies for more than a decade. This testimony is respectfully offered on behalf of the 5,800 Hawai'i individuals living behind bars, always mindful that approximately 1,500 individuals are serving their sentences abroad, thousands of miles away from their loved ones, their homes and, for the disproportionate number of incarcerated Native Hawaiians, far from their ancestral lands.

SB 569 increases the threshold value of property or services from \$300 to \$400 under the offense of theft in the second degree.

Community Alliance on Prisons supports raising the threshold, however increasing it \$100 is way out of step with most jurisdictions and with the US Department of Labor's inflation calculator. We therefore respectfully ask the committee to consider the following amendment to Section 1, line 7 from: **~~[\$300]~~ ; \$400; to ~~[\$300]~~ ; \$648.**

Hawai'i's threshold for felony theft has remained at \$300 and not been updated since 1986. We have decided that an impartial way to determine a proper threshold for Hawai'i's felony theft would be to go to the Bureau of Labor Statistics¹ and use their Inflation Calculator to see what \$300 in 1986 would equate to in 2014.

Calculating the inflation rate from 1986 to 2014, the Bureau of Labor Statistics determined that \$300 in 1986 equates to \$648 in 2014. When one adjusts for the 'paradise tax' of +30%, that adds another \$194.40 meaning that \$300 in Hawai'i in 1986 would equate to \$842.40 in 2014.

Understanding the increasing costs of incarceration and that theft is primarily a crime that is fueled by substance abuse, many states have sought ways to address the theft felony threshold.

¹ Bureau of Labor Statistics – Inflation Calculator http://www.bls.gov/data/inflation_calculator.htm

Community Alliance on Prisons has been researching this issue for more than a decade to get a landscape view of how other states deal with theft. Our research shows that Hawai'i has remained at the low-end of the threshold for felony theft and that the range for the felony threshold varied from \$200 - \$3,000.

The Pew Center on the States' Public Safety Performance Project reported:

The length of time served in prison has increased markedly over the last two decades, according to a new study by Pew's Public Safety Performance Project. Prisoners released in 2009 served an average of nine additional months in custody, or 36 percent longer, than offenders released in 1990.

Several states have reclassified or redefined criminal offenses in recent years; such changes impact sentence length and, ultimately, Length of Stay (LOS) in prison. In many states, the monetary value of stolen goods necessary to trigger a felony was established decades ago and has not been adjusted to keep pace with inflation. The result is that someone can have a longer sentence for a property crime today for the theft of less valuable material goods than in the past. In 2010, South Carolina revised several offense definitions and increased the monetary value threshold that triggers a felony charge for certain property offenses. A number of other states—including Alabama (2003), Arkansas (2011), California (2009), Delaware (2009), Montana (2009), and Washington (2009)—also have raised the felony threshold dollar amount for various theft offenses.²

Property offenders released in West Virginia and Hawaii in 2009 served 3.2 and 3.3 years on average, a full year longer than the national average³ (see Table 3). South Dakota and Tennessee tied for the shortest average LOS for property offenders released in 2009, at 1.3 years in each state, a full year less than the average. (page 18).

Since the national average of time spent is 1 year less than Hawai'i, our taxpayers are spending \$48,910 per incarcerated individual serving time for a property offense.⁴

In short, this bill proposes that **a person who steals property worth \$401** commits the offense of theft for which they could serve 3 years and 3 months on average (\$48,910 x 3 years + 90 days/3 months @ \$134/day (\$12,060)) **can cost taxpayers \$162,810**. Taxpayers have no insurance to cover our losses. Especially when Hawai'i could implement proven alternatives, but hasn't.

² TIME SERVED - The High Cost and Low Returns of Longer Prison Sentences, Pew Center on the States, Public Safety Performance Project, page 39, June 2012.

<http://www.pewstates.org/research/reports/time-served-85899394616>

³ The national average is 2.3 years.

⁴ TIMESERVED, Hawai'i Fact Sheet.

<http://www.pewstates.org/research/state-fact-sheets/time-served-in-hawaii-85899396333>

Community Alliance on Prisons has been asserting that sending low level lawbreakers to prison is paying to send individuals to criminal college.

NPR had a story on February 1, 2013⁵ that cited the work of Donald T. Hutcherson II, a sociology professor at Ohio University in Lancaster, who recently decided to tackle the question by mining the vast data in the U.S. government's National Longitudinal Survey of Youth.

The survey conducts incredibly detailed and confidential interviews, and then repeats those interviews with the same people year after year — often going to extraordinary lengths to track down those who may have moved overseas or ended up in prison.

Included in the survey are questions about how much money individuals make legally and illegally. Because the survey also ascertains whether people have spent time in prison, Hutcherson pored through data from tens of thousands of queries to a large number of young people to establish whether illegal earnings went up or down after individuals served time.

If prison reformed criminals, illegal earnings once people were released ought to have gone down. But if prison was a "finishing school" for criminals, illegal earnings after serving time should have increased.

"Spending time in prison leads to increased criminal earnings," Hutcherson says. "On average, a person can make roughly \$11,000 more [illegally] from spending time in prison versus a person who does not spend time in prison."

We know that the retail merchants association will oppose any increase in the felony threshold, yet these merchants have insurance to cover their losses. The poor, over-burdened Hawai'i taxpayer, however, is burdened with a \$134 per day/\$48, 910 per year cost for incarcerating individuals convicted of felony theft. There is no insurance for us.

Community Alliance on Prisons respectfully asks the committee to consider the research, the situation of Hawai'i's taxpayers, and to raise the threshold to at least the \$648 calculated by the Department of Labor.

Mahalo for this opportunity to submit our research on this important subject,

⁵ **When Crime Pays: Prison Can Teach Some To Be Better Criminals**, SHANKAR VEDANTAM, February 01, 2013. <http://www.npr.org/2013/02/01/169732840/when-crime-pays-prison-can-teach-some-to-be-better-criminals> Listen to the Story
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From: mailinglist@capitol.hawaii.gov
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Cc: |
Subject: Submitted testimony for SB569 on Feb 23, 2015 09:00AM
Date: Friday, February 20, 2015 1:57:20 PM

SB569

Submitted on: 2/20/2015

Testimony for JDL on Feb 23, 2015 09:00AM in Conference Room 016

Submitted By	Organization	Testifier Position	Present at Hearing
Lisa Cates	Individual	Oppose	No

Comments: \$300 is a good state statutory amount and should not be increased.
Please do not pass this measure.

Please note that testimony submitted less than 24 hours prior to the hearing, improperly identified, or directed to the incorrect office, may not be posted online or distributed to the committee prior to the convening of the public hearing.

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