

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  
Judiciary and Hawaiian Affairs**

February 23, 2021

H.B. No. 170: RELATING TO THEFT IN THE SECOND DEGREE

Chair: Mark A. Nakashima, Vice Chair: Scot Z. Matayoshi and Members of the Committee:

The Office of the Public Defender respectfully opposes H.B. No. 170, which would amend HRS § 708-831 to add the following language to what constitutes Theft in the Second Degree:

- (f) Property commonly used to store items of personal or monetary value, including any purse, handbag, or wallet.

The proponents of this bill assert that the proposed amendment “may deter potential offenders from engaging in theft of these items,” to wit, purses, handbags, or wallets, or anything that is commonly used to store items of personal or monetary value. 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 concern about this proposed legislation is that it will turn current misdemeanor offenses into felony offenses which appears to be the intent of the proponents. However, if the legislature is inclined to do this, 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.<sup>1</sup> Although Hawai‘i ranked 37th among the 50 states, if every state was an

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<sup>1</sup> Prison Policy Initiative, “Hawaii profile.” See <https://www.prisonpolicy.org/profiles/HI.html>

independent nation, Hawai‘i would have the 43rd highest incarceration rate in the world.<sup>2</sup> Only three foreign countries have a higher incarceration rate than Hawai‘i.<sup>3</sup> Thus, Hawai‘i locks up a higher percentage of its people than many wealthy democracies.<sup>4</sup> 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.

We want to stress that this bill will have no effect on purse-snatchings which already meet the definition of Theft 2 as theft from the person. It will not have an effect on the stealing of credit cards, which is already a felony under HRS § 708-8102 or on the unauthorized use of said stolen credit cards which is already a felony under HRS § 708-8100 if the value obtained is over \$300 in a 6-month period. It will not have an effect on the use of personal information which might be obtained in the theft of “personal items” as that is already covered under the offenses of Identity Theft in the First, Second, and Third Degree, which are class “A”, “B” and “C” felonies, respectively. Finally, the mere unauthorized possession of personal information is already covered under HRS § 708-839.55 and is a felony.

This proposed legislation is overly broad in seeking to apply to “property commonly used to store items of personal or monetary value.” This definition could include almost *any* type of container, including paper envelopes. Regarding “personal value,” that could include picture albums carried in purses, and a myriad of other items that are of “personal value” to the owner.

This bill is not necessary to address the scenarios described in Section 1 of the bill. As noted above, those scenarios are already covered in our Penal Code. What this bill will do is treat misdemeanants as felons, add to already overcrowded jail facilities and further clog our judicial system.

Thank you for the opportunity to comment on this measure.

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<sup>2</sup> Prison Policy Initiative, “States of Incarceration: The Global Context.” See <https://www.prisonpolicy.org/global/2018.html>

<sup>3</sup> Id.

<sup>4</sup> Prison Policy Initiative, “Hawaii profile.” See <https://www.prisonpolicy.org/profiles/HI.html>

DEPARTMENT OF THE PROSECUTING ATTORNEY  
**CITY AND COUNTY OF HONOLULU**

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**THE HONORABLE MARK M. NAKASHIMA, CHAIR**  
**HOUSE COMMITTEE ON JUDICIARY**  
**Thirty-first State Legislature**  
**Regular Session of 2021**  
**State of Hawai`i**

February 23, 2021

**RE: H.B. 170; RELATING TO THEFT IN THE SECOND DEGREE.**

Chair Nakashima, Vice Chair Matayoshi, members of the House Committee on Judiciary, the Department of the Prosecuting Attorney of the City and County of Honolulu submits the following testimony in support of H.B. 170, with suggestions.

The purpose of H.B. 170 is to amend the offense of Theft in the Second Degree (§708-731, H.R.S.), to include the theft of property which is commonly used to store items of personal or monetary value which would include purses, handbags or wallets.

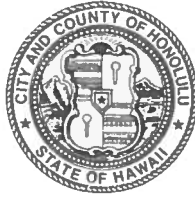
Currently, to charge and convict a defendant for the charge of Theft in the Second Degree, the Department must be able to prove beyond a reasonable doubt that the defendant intentionally took property of another and that the defendant was aware or believed that the value of the property exceeded \$750. This state of mind is very difficult or nearly impossible when dealing with the theft of someone's purse or wallet.

On page 5, line 2, after the word "including," the Department would suggest adding the phrase, "but not limited to," to indicate that items that perform the same function as a purse, handbag, or wallet—but may not be specifically referred to as such—could be covered and protected.

For these reasons, the Department of the Prosecuting Attorney of the City and County of Honolulu supports the passage of H.B. 170. Thank you for this opportunity to testify.

POLICE DEPARTMENT  
CITY AND COUNTY OF HONOLULU

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OUR REFERENCE PO-KK

February 23, 2021

The Honorable Mark M. Nakashima, Chair  
and Members  
Committee on Judiciary  
and Hawaiian Affairs  
House of Representatives  
Hawaii State Capitol  
415 South Beretania Street, Room 325  
Honolulu, Hawaii 96813

Dear Chair Nakashima and Members:

SUBJECT: House Bill No. 170, Relating to Theft in the Second Degree

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

The HPD supports House Bill No. 170, Relating to Theft in the Second Degree. This bill amends Hawaii Revised Statutes, Section 708-831 (1) to include "(f) Property commonly used to store items of personal or monetary value, including any purse, handbag, or wallet." Including these may deter potential offenders from engaging in the theft of these items, as it will be a felony. This will have a long-term deterrent effect, creating a safer environment for the community.

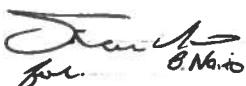
The HPD urges you to support House Bill No. 170, Relating to the Theft in the Second Degree.

Thank you for the opportunity to testify.

APPROVED:

Sincerely,

  
Susan Ballard  
Chief of Police

  
Paul Okamoto, Captain  
Criminal Investigation Division