

DEPARTMENT OF THE PROSECUTING ATTORNEY
CITY AND COUNTY OF HONOLULU

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THE HONORABLE AARON LING JOHANSON, CHAIR
HOUSE COMMITTEE ON CONSUMER PROTECTION AND COMMERCE
Thirty-First State Legislature
Regular Session of 2021
State of Hawai`i

February 11, 2021

RE: H.B. 181; RELATING TO THE DEFINITION OF PROPERTY.

Chair Johanson, Vice Chair Kitagawa, and members of the House Committee on Consumer Protection and Commerce, the Department of the Prosecuting Attorney of the City and County of Honolulu ("Department") submits the following testimony in strong support of H.B. 181. This bill is part of the Department's 2021 legislative package.

The purpose of H.B. 181, is to update the definition of the term "property" to include various forms of intangible property, such as property that is stored in an electronic format.

The Hawaii Penal Code's definition of the term "property" has not been amended since the Hawaii Penal Code was first enacted in 1972. Thus, as currently written, the definition of "property" does not include intangible property that is stored in electronic format, such as property that is stored on a computer hard drive or other storage media.

H.B. 181, will update the definition of "property" to include intangible property that may be stored in an electronic format. As amended, the term "property" will mean:

"any money, personal property, real property, thing in action, evidence of debt or contract, or article of value of any kind, and includes intellectual property and property that is stored in an electronic medium and is retrievable in a perceivable form. Commodities of a public utility nature such as gas, electricity, steam, and water constitute property, but the supplying of such a commodity to premises from an outside source by means of wires, pipes, conduits, or other equipment shall be deemed a rendition of a service rather than a sale or delivery of property". (New language underscored.)

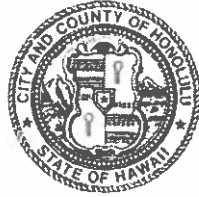
The definition of the term "property" needs to be updated to address the problem of theft of intellectual property and property that is stored in electronic format. Currently, criminal cases that involve theft of intangible property stored in electronic format are being declined. The reason: Data

stored in electronic format does not qualify as “property”. The Honolulu Prosecutor’s Office recently declined prosecution of a theft case involving a client list that was valued at over \$300,000, because the client list was stored in electronic format, and therefore, outside the scope of the current definition of “property”. H.B. 181, will provide needed protection for those who maintain property in electronic format. Property maintained in electronic format can have significant value, and that property should be protected to the same extent as property maintained in other formats.

For these reasons, the Department of the Prosecuting Attorney strongly supports the passage of H.B. 181. Thank you for this opportunity to testify.

POLICE DEPARTMENT
CITY AND COUNTY OF HONOLULU

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OUR REFERENCE MK-KK

February 11, 2021

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. 181, Relating to the Definition of Property

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

The HPD opposes House Bill No. 181, Relating to the Definition of Property, and submits the following recommendations.

The HPD opposes adding "intellectual property" to the definition of property. The HPD does not have the personnel, investigative expertise, or ability to determine the monetary value associated with intellectual property crimes.

In working with the Department of the Prosecuting Attorney, the HPD requests removing "intellectual property" from the definition of property. However, the HPD supports the addition of "...property that is stored in an electronic medium and is retrievable in perceivable form" to the definition of property.

The HPD urges you to oppose House Bill No. 181, Relating to the Definition of Property, and appreciates the committee's consideration on these concerns. Thank you for the opportunity to testify.

APPROVED:

A handwritten signature in cursive script, reading "Susan Ballard".

Susan Ballard
Chief of Police

Sincerely,

A handwritten signature in cursive script, reading "Mikel Kunishima".
Mikel Kunishima, Captain
Criminal Investigation Division