



**WRITTEN TESTIMONY OF
THE DEPARTMENT OF THE ATTORNEY GENERAL
KA 'OIHANA O KA LOIO KUHINA
THIRTY-THIRD LEGISLATURE, 2025**

ON THE FOLLOWING MEASURE:

S.B. NO. 371, S.D. 1, RELATING TO PROPERTY DAMAGE OF CRITICAL INFRASTRUCTURE FACILITIES.

BEFORE THE:

SENATE COMMITTEE ON JUDICIARY

DATE: Wednesday, February 26, 2025 **TIME:** 9:40 a.m.

LOCATION: State Capitol, Room 016

TESTIFIER(S): **WRITTEN TESTIMONY ONLY.**

(For more information, contact Tricia M. Nakamatsu,
Deputy Attorney General, at 808-586-1500)

Chair Rhoads and Members of the Committee:

The Department of the Attorney General (Department) provides the following comments and suggested amendments.

The purpose of this bill is to create two new offenses: (1) Criminal Property Damage of a Critical Infrastructure Facility in the First Degree, a Class A felony, and (2) Criminal Property Damage of a Critical Infrastructure Facility in Second Degree, a Class B felony. In addition, the bill defines relevant terms and classifies these offenses as manslaughter when they result in the death of another person.

These proposed offenses would complement existing statutes by establishing heightened penalties if a person damages a critical infrastructure facility and the damage results in widespread community effects. Although section 708-892, Hawaii Revised Statutes (HRS) (Computer Damage in the First Degree), addresses damage to the computers, computer systems, and computer networks that manage or control any critical infrastructure in Hawaii, it does not cover **direct** damages to critical infrastructure.

The Department recommends removing section 3 of the bill, which amends section 707-702(1), HRS, by adding a paragraph (c) that makes commission of an offense under the new sections of the bill a manslaughter offense if the conduct causes the death of another person. Even without this amendment to section 707-702, HRS,

prosecutors can charge Manslaughter under existing section 707-702(1)(a) (recklessly causing the death of another person), in addition to the offense of Criminal Property Damage of a Critical Infrastructure Facility in the First or Second Degree. Allowing section 707-702 to remain unamended helps to cover the various levels of culpability; if a jury finds that prosecutors did not prove the intentional or knowing state of mind to convict a defendant for Criminal Property Damage of a Critical Infrastructure Facility in the First or Second Degree, the jury could still convict on the reckless state of mind for Manslaughter.

As an alternative, if the Committee wishes to increase Criminal Property Damage of a Critical Infrastructure Facility in the Second Degree to a Class A felony in cases where the offense results in death of another person, the Department recommends amending new section 708-B, on page 2, lines 5 to 14, by amending new subsection (2) and adding subsections (3) and (4), to read as follows (underscoring removed from new material in bill, to Ramseyer additional changes):

(2) ~~[Criminal]~~ Except as provided in subsection (3), criminal property damage of a critical infrastructure facility in the second degree is a class B felony.

(3) The offense of criminal property damage of a critical infrastructure facility in the second degree is a class A felony if the commission of the offense causes the death of another person.

(4) The state of mind requirement for subsection (3) shall not be applicable to whether the person was aware that the person's actions would cause the death of another person. A person shall be strictly liable with respect to the result if there is sufficient evidence to establish that the offense caused the death of another person.

Because Criminal Property Damage of a Critical Infrastructure Facility in the First Degree is already a Class A felony, there is no higher penalty unless the Committee wishes to impose a mandatory minimum term of imprisonment. A mandatory minimum term of imprisonment could be established by inserting subsections (3) and (4) in section 708-A after page 2, line 4, as follows:

(3) The person shall be sentenced to an indeterminate term of imprisonment of twenty years pursuant to section 706-659 with a mandatory minimum term of imprisonment of _____ years without

possibility of parole, if the commission of the offense causes the death of another person.

(4) The state of mind requirement for subsection (3) shall not be applicable to whether the person was aware that the person's actions would cause the death of another person. A person shall be strictly liable with respect to the result if there is sufficient evidence to establish that the offense caused the death of another person.

Thank you for the opportunity to testify on this matter.