

**BY EMAIL: HSGTestimony@capitol.hawaii.gov**

Committee: Committee on Housing  
Hearing Date/Time: Wednesday, February 11, 2009, 10:30 a.m.  
Place: Room 325  
Re: Testimony of the ACLU of Hawaii in Opposition to H.B. 72, Relating to Public Housing

Dear Chair Cabanilla and Members of the Committee on Housing:

The American Civil Liberties Union of Hawaii (“ACLU of Hawaii”) writes in opposition to H.B. 72, which seeks to amend criminal trespass in the first degree to include a person who enters or remains unlawfully in or upon the premises of a public housing project after reasonable request or warning to leave by housing authorities or a police offer.

- The Police Already Have the Authority to Physically Arrest Those Charged with Simple Trespass

House Stand. Comm. Rep. No. 330-08 (2008) states that “HPD indicated that public housing projects are considered a quasi-private area, which has prevented arrests for public consumption of liquor and trespassing. This measure would allow arrests to be made.”

This proffered justification for this bill (which is similar to that proposed for Act 50 of 2004) is *patently false*. First, the offense of simple trespass as set forth in H.R.S. § 708-815 applies to “premises” which is defined as any building or real property and includes public housing projects. Second, H.R.S. § 803-6(b) specifically authorizes the *optional* use of a citation by the police in lieu of an arrest where the offense involved is “a misdemeanor, petty misdemeanor or violation.” For over 25 years, it has been clear that §803-6(b) allows police to physically arrest an individual for a violation. *State v. Kapoi*, 64 Haw. 130, 637 P.2d 1105 (1981) (holding, *inter alia*, that physical arrest for simple trespass was authorized by §806-3(b)). Indeed, in enacting §803-6(b), the Legislature intended to “provide for an optional use of the citation in lieu of arrest. *The police officer could still make a physical arrest if the situation necessitated such an action.*” House Stand. Comm. Rep. No. 712 (1975), House Journal, at 1303 (emphasis added).

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- Extending the Criminal Trespass Statute to Public Housing Poses Grave Constitutional Concerns Similar to Those of Act 50 of 2004

Extending the current criminal trespass law to quasi-public property poses grave constitutional concerns similar to those of Act 50 of 2004. As some members may recall, in 2004, to combat the “squatting” problem, the legislature proposed an amendment to H.R.S. § 708-814 that simply inserted the words “public property” two times into an existing criminal trespass statute that had applied to commercial premises only. Act 50 of 2004 amended H.R.S. § 708-814 (hereinafter referred to as “Act 50” or “708-814”) to transform it into a vaguely worded law sweeping in its scope. By its very terms, § 708-814 provided that anyone can be banned from public property for up to one-year simply by being given a written trespass warning “stating that the individual’s presence is no longer desired on the property....” H.R.S. § 708-814(1)(b) (2004).

Although Act 50 of 2004 was proposed to the Hawaii legislature as a necessary tool to combat the homelessness problem, Act 50 was nothing less than a return to the street-sweeping laws of America’s past and no different in substance than those constitutionally infirm laws.

On September 7, 2004, the ACLU of Hawaii filed a lawsuit challenging the validity of Act 50 as to public property on the grounds that it was unconstitutional and gave public officials overly broad powers to ban individuals from using public spaces such as beaches, streets or sidewalks. The lawsuit was based on over six decades of U.S. Supreme Court precedent that condemned the inherent vagueness of laws like the challenged statute. The lawsuit was additionally premised on settled principles of due process as well as the fundamental right to move freely (which is protected under both the U.S. Constitution and Article I, § 2 of the Hawaii Constitution) and traditional First Amendment freedoms.

In 2005, the Legislature, mindful of the sweeping and unintended impact of Act 50, recognized the call to repeal Act 50 and did so for the benefit of all residents and visitors to Hawaii.

- H.B. 1985 Is Potentially More Dangerous Than Act 50 of 2004

Given the nature of public housing projects, the proposed bill may pose even greater dangers than Act 50. For example, it is possible that the grounds of a particular public housing development should be treated as a public forum. Restricting access to these areas (which are public in nature) would overextend trespass statutes and may very well violate the free speech and association rights of both tenants and visitors.

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Hon.Rep. Cabanilla, HSG Committee  
and Members Thereof  
February 11, 2009  
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This unnecessary, misguided and potentially unconstitutional measure does not accurately reflect sound public policy. We strongly urge the legislature to hold this measure.

The mission of the ACLU of Hawaii is to protect the fundamental freedoms enshrined in the U.S. and State Constitutions. The ACLU of Hawaii fulfills this through legislative, litigation, and public education programs statewide. The ACLU of Hawaii is a non-partisan and private non-profit organization that provides its services at no cost to the public and does not accept government funds. The ACLU of Hawaii has been serving Hawaii for over 40 years.

Thank you for this opportunity to testify.

Sincerely,

Laurie A. Temple  
Staff Attorney  
ACLU of Hawaii

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LINDA LINGLE  
GOVERNOR



CHAD K. TANIGUCHI  
EXECUTIVE DIRECTOR

**STATE OF HAWAII**

DEPARTMENT OF HUMAN SERVICES  
HAWAII PUBLIC HOUSING AUTHORITY  
1002 NORTH SCHOOL STREET  
POST OFFICE BOX 17907  
Honolulu, Hawaii 96817

Statement of  
**Chad K. Taniguchi**  
Hawaii Public Housing Authority  
Before the

**HOUSE COMMITTEE ON HOUSING**

February 11, 2009 1:15 p.m.  
Room 225, Hawaii State Capitol

In consideration of  
**H.B. 72**  
**RELATING TO PUBLIC HOUSING**

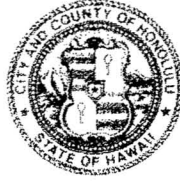
The Hawaii Public Housing Authority (HPHA) supports the intent of H.B. 72, which amends criminal trespass to include public housing projects.

This measure will significantly improve the ability of the Hawaii Public Housing Authority to ensure a livable community for our residents.

We are currently discussing the language of this measure with the Honolulu Police Department in order to ensure an enforceable result. At the hearing on February 11 we will provide proposed amended language similar to that we proposed for SB 1221.

POLICE DEPARTMENT  
CITY AND COUNTY OF HONOLULU  
801 SOUTH BERETANIA STREET • HONOLULU, HAWAII 96813  
TELEPHONE: (808) 529-3111 • INTERNET: www.honolulu-pd.org

MEMORANDUM  
NO. 12



BOISSE P. CORREA  
CHIEF

PAUL D. PUTZULU  
KARE A. SOOHEY  
DEPUTY CHIEFS

DISPATCH NO. BH-LE

February 11, 2009

The Honorable Rida Cabanilla, Chair  
and Members  
Committee on Housing  
House of Representatives  
State Capitol  
Honolulu, Hawaii 96813

Dear Chair Cabanilla and Members:

Subject: House Bill No. 72, Relating to Public Housing

I am Major Bart Huber of District 2 (Wahiawa) of the Honolulu Police Department, City and County of Honolulu. The Honolulu Police Department (HPD) opposes House Bill No. 72, which seeks to amend trespass in the first degree to include persons entering and remaining unlawfully in a public housing project.

The current draft of this bill presumes that a representative from State Public Housing would always be present to assist the police officer to determine the status of a possible trespasser. In most of the State's Public Housing there is no security or management representative on location, especially overnight. The police are not in a position, nor do they wish to be, to make the determination as to who is trespassing.

The HPD, being the largest law enforcement agency in the state, is constantly tasked with more and more duties that actually fall under the jurisdiction of state or private entities. While we understand that this bill is intended to control trespassing in public housing projects, we feel that the current Simple Trespass, as well as housing administrative rules, if enforced, is adequate.

We ask that you oppose the passage of House Bill No. 72.

Thank you for the opportunity to testify.

Sincerely,

A handwritten signature in black ink, appearing to read "Bart Huber".

BART HUBER, Major  
District 2

APPROVED:

for: A handwritten signature in black ink, appearing to read "Boisse P. Correa".  
BOISSE P. CORREA  
Chief of Police

*Serving and Protecting With Aloha*