

SB2134

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

February 5, 2010

S.B. No. 2134: RELATING TO DESECRATION

Chair Taniguchi and Members of the Committee:

We oppose the passage of S.B. No. 2134. This bill would expand the criminal liability under the offense of desecration to include negligent desecration of a place of burial. This redefinition of the offense would criminalize the unintentional actions of developers, contractors, construction companies and their employees who oftentimes disturb ancient burial sites during projects across the state. Moreover, it would place at risk of criminal liability, workers who maintain memorial parks and who unintentionally damage headstones and other objects associated with gravesites during the performance of their duties.

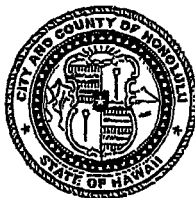
The purpose of the desecration law is to punish those who deface graves, monuments and places of worship to deliver political statements or disseminate hatred. Indeed, the definition of the term “desecrate,” included in H.R.S. §711-1107, is “defacing, damaging, polluting, or otherwise physically mistreating in a way that the defendant knows will outrage the sensibilities of persons likely to observe or discover the defendant’s action.” The very definition of this term connotes an act designed to outrage one’s sensibilities. As such this law should be limited to intentional acts.

Thank for the opportunity to comment on this measure.

DEPARTMENT OF PARKS AND RECREATION
CITY AND COUNTY OF HONOLULU

1000 ULUOHIA STREET, SUITE 309 • KAPOLEI, HAWAII 96707
TELEPHONE: (808) 768-3003 • FAX: (808) 768-3053 • CITY WEB SITE: www.honolulu.gov

MUFI HANNEMANN
MAYOR



LESTER K. C. CHANG
DIRECTOR

RICHARD HARU
DEPUTY DIRECTOR

February 3, 2010

The Honorable Brian T. Taniguchi, Chair
Committee on Judiciary and
Government Operations
State Senate
State Capitol
Honolulu, Hawaii 96813

Dear Chair Taniguchi and Members:

Subject: SENATE BILL NO. 2134 RELATING TO DESECRATION

The Department of Parks and Recreation is not in favor of Senate Bill No. 2134 as written. Our concern is that by changing the state of mind required for the commission of the offense from intentional to negligent could be interpreted that the City and County of Honolulu could be negligent and subject to criminal prosecution when they undertake construction of projects on sites where they knew or should have known that there was the possibility of desecrating a place of burial because of previously uncovered lwi on or near the properties being improved.

We understand that this proposed Legislation is in part a response to City Council Resolution 09-194 that urged the State Legislature to amend Section 711-1107, Hawaii Revised Statutes, to require that a person convicted of grave desecration be found negligent rather than intending to desecrate.

The Department of Parks and Recreation did not testify against this Resolution when it was being considered as it was specifically related to recent desecration of the Puuiki Cemetery in Waiialua Town and did not suggest the potential criminal consequences of the City encountering lwi when constructing capital improvements in our parks.

Thank you for the opportunity to comment.

LESTER K. C. CHANG
Director

LKCC:mk