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**From:** mailinglist@capitol.hawaii.gov  
**Sent:** Monday, March 08, 2010 8:43 AM  
**To:** HSGtestimony  
**Cc:** alan.r.sarhan@hawaii.gov  
**Subject:** Testimony for SB2278 on 3/10/2010 9:00:00 AM  
**Attachments:** SB2278\_SD2\_trespass\_HSG.pdf

Testimony for HSG 3/10/2010 9:00:00 AM SB2278

Conference room: 325  
Testifier position: support  
Testifier will be present: Yes  
Submitted by: Alan Sarhan  
Organization: Hawaii Public Housing Authority  
Address:  
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Submitted on: 3/8/2010

Comments:

LINDA LINGLE  
GOVERNOR



DENISE M. WISE  
EXECUTIVE DIRECTOR

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

BARBARA E. ARASHIRO  
EXECUTIVE ASSISTANT

Statement of  
**Denise M. Wise**  
Hawaii Public Housing Authority  
Before the

**HOUSE COMMITTEE ON HOUSING**

March 10, 2010 9:00 A.M.  
Room 325, Hawaii State Capitol

In consideration of  
**S.B. 2278 S.D. 2**  
**RELATING TO PUBLIC HOUSING**

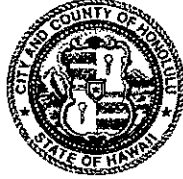
The Hawaii Public Housing Authority (HPHA) supports S.B. 2278 SD2, which amends criminal trespass in the first degree to include a person who enters or remains unlawfully in or upon the premises of a public housing project after reasonable request or warning to leave by housing authorities.

The safety and security of the residents of public housing is of paramount importance to HPHA; this bill would provide an important tool in ensuring that security. Current statutes do not give law enforcement agencies and HPHA the legal authority to deal effectively with some situations where unauthorized persons enter public housing residential premises and do damage to property or otherwise prevent the quiet enjoyment of their homes by residents.

Once the bill is passed law enforcement agencies would be authorized to cite or arrest unauthorized persons who present a danger to the residents and have no legitimate purpose for being on the property.

POLICE DEPARTMENT  
CITY AND COUNTY OF HONOLULU

801 SOUTH BERETANIA STREET · HONOLULU, HAWAII 96813  
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MUFI HANNEMANN  
MAYOR

LOUIS M. KEALOHA  
CHIEF

DELBERT T. TATSUYAMA  
RANDAL K. MACADANGANG  
DEPUTY CHIEFS

OUR REFERENCE BH-LE

March 10, 2010

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

Dear Chair Cabanilla and Members:

Subject: Senate Bill No. 2278, SD 2, 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 Senate Bill No. 2278, SD 2, which seeks to amend trespass in the first degree to include persons entering and remaining unlawfully in a public housing project.

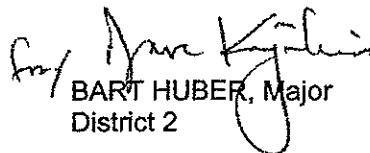
The current draft of this bill presumes that a representative from the public housing would always be present to assist the police officer to determine the status of a possible trespasser. In most of the public housing complexes, there is no security or management representative on location, especially 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 Senate Bill No. 2278, SD 2.

Thank you for the opportunity to testify.

Sincerely,

  
BART HUBER, Major  
District 2

APPROVED:

  
FOIA LOUIS M. KEALOHA  
Chief of Police

*Serving and Protecting With Aloha*

**TO: The Honorable Rida Cabanilla , ( Chair )  
The Honorable Pono Chong ( Vice Chair )  
and Members of the Housing Committee**

**DATE: Wednesday, March 10, 2010  
9:00 AM Room 325**

**RE: SB 2278, SD2 Relating to Public Housing**

**POSITION: STRONG SUPPORT**

**My name is Fetu Kolio, I am the Tenants Association President, of Mayor Wright Homes, one of Hawaii's State Public Housing Projects . Also I serve as a Member of the Kalihi-Palama Neighborhood Board No.15, I am testifying today in Strong Support of SB-2278,SD2. As a Public Housing Resident and a Citizens Patrol Member, of our housing complex we are the eyes and ears of our community .**

**SB-2278,SD2 would be a very helpful tool for the Honolulu Police Department, to work together with ( H.P.H.A ) the Hawaii Public Housing Authority, to put together strategies to help keep public housing a safe place to live with our families.**

**We have Drug deals and Drug use on public housing property, or on city streets around public housing, we have shootings, assaults on tenants by unwanted gang members who are not paying rent for a Unit to live in public housing. And also robberies assaults on community residents that live around public housing.**

**Thank you for hearing this bill, please help restore safety for our families pass SB 2278,SD2.**

**FETU KOLIO,  
Mayor Wright Homes , Tenants Association ( President )  
also the Community Citizen Patrol ( Captain )**

**TO: The Honorable Rida Cabanilla ,                      Chair**  
**The Honorable Pono Chong                      ,                      Vice Chair**  
**and Members of the Housing Committee**

**DATE:                      Wednesday, March 10, 2010**  
**9:00 am              Room 325**

**RE:              SB-2278,SD2 Relating to Public Housing**

**POSITION:              STRONG SUPPORT**

**My name is Ene Augafa , and as a resident of public housing we need this bill SB-2278,SD2 because safety is the main reason why all State Public Housing Tenants, pay rent \$\$ .**

**SB-2278,SD2 would help put a safety plan for tenants by the property owner (H.P.H.A.) because we pay rent to live and appreciate having a place that we call our home at Mayor Wright Homes, public housing .**

**We have gangs , drugs , shootings , also attacks on Community Residents and tenants of Mayor Wright Housing, Public housing.**

**Thank you for hearing this bill and my testimony please help pass SB-2278,SD2**

**Ene Augafa ,              (Mayor Wright Homes)**

**TO: The Honorable Rida Cabanilla , ( Chair )  
The Honorable Pono Chong , ( Vice Chair )  
and Members of the Housing Committee**

**DATE: Wednesday, March 10, 2010  
9:00 AM Room 325**

**RE: SB-2278,SD2 Relating to Public Housing**

**POSITION: STRONG SUPPORT**

**My name is Leanerd Lester , and a resident of Public housing, Mayor Wright Homes. I want to thank this Committee on Judiciary and Government Operations for hearing this bill SB-2278,SD2. I strongly Support that criminal trespass should be amended to the first degree to help the Hawaii Public Housing Authority, to make sure that safety of residents of public housing and also community residents be a priority .**

**SB-2278,SD1 would help stop the ongoing issues on assaults and robberies on residents that live in or around public Housing, Mayor Wright Housing. And as a tool for the Honolulu Police Department in fighting crime.**

**We have drugs, and gangs members the deal them on State Public Housing Property, Mayor Wright Homes.**

**Please help bring safety to all residents in our communities pass SB-2278,SD2 and for hearing my testimony.**

**Leanerd Lester , ( MAYOR WRIGHT HOMES )**

**TO: THE HONORABLE RIDA CABANILLA  
THE HONORABLE PONO CHONG  
AND MEMBERS OF THE HOUSING COMMITTEE**

**(CHAIR)  
( VICE CHAIR )**

**DATE : WEDNESDAY, MARCH 10, 2010  
9:00 AM ROOM 325**

**RE : SB-2278,SD2 RELATING TO PUBLIC HOUSING**

**POSITION : STRONG SUPPORT**

**MY NAME IS TIKIN NAUR , I AM A RESIDENT OF MAYOR  
WRIGHT HOMES , ONE OF THE PUBLIC HOUSING IN THE STATE OF HAWAII  
I WOULD LIKE THIS BILL SB-2278,SD2 TO HELP ALL RESIDENTS THAT PAY  
RENT TO LIVE IN A UNIT IN PUBLIC HOUSING .**

**SB-2278,SD2 WOULD ESTABLISH PRIORITY UNDER THE PUBLIC  
HOUSING AUTHORITY ( H.P.H.A ) TO PUT TOGETHER A SAFETY PLAN FOR  
PEOPLE AS IF THE IMPORTANCE IS THE SAME AS FOR A BUILDING OR  
ANY PROPERTY OF ( STATE PUBLIC HOUSING ) .**

**PLEASE HELP PASS SB-2278,SD2 TO RESTORE THE QUALITY OF LIFE  
TO ALL THAT LIVE IN OR AROUND (HAWAII STATE PUBLIC HOUSING) .**

**TIKIN NAUR**

**MAYOR WRIGHT HOMES.**

**TO: The Honorable Rida Cabanilla ,  
The Honorable Pono Chong ,  
and members of the Housing Committee**

**Chair  
Vice Chair**

**DATE: Wednesday, March 10, 2010  
9:00 AM Room 325**

**RE: SB 2278,SD2 Relating To Public Housing**

**POSITION: STRONG SUPPORT**

**AS a resident of public housing , I Randy Nicky strongly encourage the passage of this bill SB-2278,SD2 that amends criminal trespass in the first degree it would help deter the criminal elements that use our State Public Housing for their criminal activities .**

**SB-2278,SD2 can help alleviate or eliminate gang members that use and deal drugs on public housing property, and also on city streets that around Mayor Wright Housing, and block parties types of public drinking.**

**To help with a solution we would need to start with-in , and that's the property owners responsibility to support any measures to help keep the peace in our communities by having a safety plan, because it should never be the tenants responsibility , because we are not the manager, and that the managers have all the authority .**

**Thank you for letting me testify please pass bill SB-2278,SD2 .**

**Randy Nicky ,**

**Mayor Wright Homes**





Committee: Committee on Housing  
Hearing Date/Time: Wednesday, March 10, 2010, 9:00 a.m.  
Place: Room 325  
Re: Testimony of the ACLU of Hawaii in Opposition to S.B. 2278, S.D.2,  
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 S.B. 2278, SD2, 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).

American Civil Liberties Union of Hawai'i  
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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.

- S.B. 2278 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

Hon. Rep. Cabanilla, HSG Committee  
and Members Thereof  
March 10, 2010  
Page 3 of 3

public in nature) would overextend trespass statutes and may very well violate the free speech and association rights of both tenants and visitors.

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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