

JUDtestimony

From: Nick.D.Birck@hawaii.gov
Sent: Monday, February 14, 2011 2:08 PM
To: JUDtestimony
Subject: CORRECTED Testimony for HB231 on 2/15/2011 2:00:00 PM
Attachments: HPHA Testimonial Submission for JUD 2.15.11 re HB231HD1.pdf

Importance: High

Aloha,

After submitting the HPHA's testimony for HB231, some errors were noticed. Attached please find a corrected copy of our testimony. Please scratch our earlier submitted testimony in favor of this draft.

Sorry for the inconvenience. Thank you for your help.

Nick Birck

Nicholas D. Birck
nick.d.birck@hawaii.gov
Hawaii Public Housing Authority
Planning and Evaluation Office
808-832-4673

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From: mailinglist@capitol.hawaii.gov
To: JUDtestimony@capitol.hawaii.gov
Cc: nick.d.birck@hawaii.gov
Date: 02/14/2011 01:55 PM
Subject: Testimony for HB231 on 2/15/2011 2:00:00 PM

Testimony for JUD 2/15/2011 2:00:00 PM HB231

Conference room: 325
Testifier position: oppose
Testifier will be present: Yes
Submitted by: Denise M. Wise
Organization: Hawaii Public Housing Authority
Address:
Phone:
E-mail: nick.d.birck@hawaii.gov
Submitted on: 2/14/2011

NEIL ABERCROMBIE
GOVERNOR



DENISE M. WISE
EXECUTIVE DIRECTOR

STATE OF HAWAII
DEPARTMENT OF HUMAN SERVICES
HAWAII PUBLIC HOUSING AUTHORITY
1002 NORTH SCHOOL STREET
Honolulu, Hawaii 96817

BARBARA E. ARASHIRO
EXECUTIVE ASSISTANT

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

HOUSE COMMITTEE ON JUDICIARY

February 15, 2011 2:00 P.M.
Room 325, Hawaii State Capitol

In consideration of
H.B. 231 H.D. 1
RELATING TO PUBLIC HOUSING

Mister Chair and Members of the House Committee on Judiciary, thank you for the opportunity to provide you with comments regarding House Bill 231 as amended in House Draft 1, relating to public housing.

The Hawaii Public Housing Authority (HPHA) appreciates the intent of this measure; however, we oppose enactment of the measure since it would be administratively difficult to enforce and would have adverse budgetary impacts. While the HPHA appreciates legislative concern for increasing security protocols at our developments, we do not believe that this bill offers the most effective solution to controlling access to our properties. The HPHA believes such a policy would be most effective in partnership with tenant associations and in conjunction with community policing and tenant awareness programs. It is through such initiatives that tenants and the agency can work together make our communities safer.

Establishing a program that would require any visitors to an HPHA property to obtain a guest pass would be an administratively onerous policy for the agency to initiate and enforce. Several of our housing developments are large properties, with open pedestrian and vehicular connections to neighboring communities. Such a policy would require the enclosure of vast open spaces or impact to natural landscapes and would result in the physical separation of our residential communities from their neighborhoods in order to allow management full control over ingress and egress.

The bill, as amended in House Draft 1, would make this administratively burdensome task even more difficult by requiring only certain visitors "that consistently and predominantly trespass [. . .] acquire a visitor pass." If passed, this legislation would put property management staff in the difficult position of defining "consistent and predominant" trespassers, identifying such persons, and enforcing this policy selectively

on them. Such persons would tend to be aware of such requirements and would avoid identification by management, making this policy essentially ineffective.

This visitor pass policy would have adverse budgetary impacts on the agency that are disproportionate to the benefits of the policy change. Many of our developments are small and are located in rural, remote areas. The required construction of access controls and the additional staff necessary to provide constant supervision of guest ingress and egress identifying consistent and predominant trespassers would defeat any public safety cost savings incipient to this measure.

Further, this bill as amended would place persons who consistently utilize pedestrian pathways that cross public housing developments in danger of criminal liability. Our communities are part of their surrounding neighborhoods and management should be permitted to allow commuting to occur between residences, nearby schools, bus stops, and businesses. This policy would criminalize the daily traffic of school children across many of our developments as consistent trespassers, or require management to issue visitor passes every day to such commuters.

The measure also seeks to expand criminal trespass in the first degree to include remaining unlawfully upon the premises of any public housing project and makes non-possession of a visitor's pass prima facie evidence of criminal trespass. The HPHA opposes this amendment to the criminal trespass law as unnecessary, duplicative of current policy, and because it would rely on initiation of a visitor pass policy. Our properties are already protected by criminal trespass statutes currently in force, and those developments which tend to experience trespass issues already possess signs and safeguards notifying potential trespassers of liability. The HPHA supports strengthened criminal trespass policy as embodied in Senate Bill 907, which essentially mirrors HPHA's trespass policy, but opposes one that would require visitor passes.

The HPHA opposes the establishment of a two-year pilot project for Mayor Wright homes, as written in the amended bill, Section 3. The agency feels that this is a policy change which is exactly the type of decision making the Legislature has entrusted to the HPHA's Board of Directors through its rulemaking and policy development powers. The HPHA feels that the determination of a revised, property-specific security policy is one that is soundly within the Board's purview and would respectfully request the Legislature to allow the Board to exercise its governance in the development of such policies. The HPHA would prefer the development of such policy to be undertaken through an agency developed methodology that would allow us to incorporate participation from public safety officials, our Resident Advisory Board, property management staff, and the tenants that would be directly impacted by this measure.

The HPHA appreciates the opportunity to provide the House Committee on Judiciary with the agency's position regarding H.B. 231 H.D. 1. We respectfully request the Committee to hold this measure.

JUDtestimony

From: mailinglist@capitol.hawaii.gov
Sent: Monday, February 14, 2011 3:40 PM
To: JUDtestimony
Cc: lt@acluhawaii.org
Subject: Testimony for HB231 on 2/15/2011 2:00:00 PM
Attachments: 2.15.11.pdf

Testimony for JUD 2/15/2011 2:00:00 PM HB231

Conference room: 325
Testifier position: oppose
Testifier will be present: No
Submitted by: Laurie Temple
Organization: ACLU of Hawaii
Address:
Phone:
E-mail: lt@acluhawaii.org
Submitted on: 2/14/2011

Comments:



Committee: Committee on Judiciary
Hearing Date/Time: Tuesday, February 15, 2011, 2:00 p.m.
Place: Room 325
Re: Testimony of the ACLU of Hawaii in Opposition to H.B. 231, HD1,
Relating to Public Housing

Dear Chair Keith-Agaran and Members of the Committee on Judiciary:

The American Civil Liberties Union of Hawaii ("ACLU of Hawaii") writes in opposition to H.B. 231, HD1 for the following reasons:

- 1) Failing to define "consistently" and "predominately" in H.R.S. §356D(a) poses vagueness issues in that it allows for unfettered discretion.

H.B. 231, HD1 would allow any visitor to be banned who "consistently and predominately" trespasses without explaining what constitutes "consistently and predominately." Courts have repeatedly found similar language to be unconstitutional vague. "Vagueness may invalidate a criminal for either of two independent reasons. First, it may fail to provide the kind of notice that will enable ordinary people to understand what conduct it prohibits; second, it may authorize and even encourage arbitrary and discriminatory enforcement." *City of Chicago v. Morales*, 527 U.S. 41, 56 (1999) (citing *Kolender v. Lawson*, 461 U.S. 352, 357 (1983)).

- 2) The police already have the authority to physically arrest those charged with *Simple* Trespass, which renders this bill unnecessary.

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

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Hon. Rep. Keith-Agaran, JUD Committee
and Members Thereof
February 15, 2011
Page 2 of 4

§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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- 2) 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.

- 3) H.B. 231, HD1 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. Keith-Agaran, JUD Committee
and Members Thereof
February 15, 2011
Page 4 of 4

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

American Civil Liberties Union of Hawai'i
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DATE: Monday, February 14, 2011
FROM: Leonard Lester
TO: House Committee on Judiciary
RE: HB231,HD1 Relating To Public Housing
Criminal Trespass
FAX: 586-6211
Testimony - 1 page (2 page, including cover sheet)

**TO: The Honorable Gilbert Keith-Agaran,
The Honorable Karl Rhoads,
and Members of the Judiciary Committee**

**(Chair)
(Vice Chair)**

**DATE: Tuesday, February 15, 2011
2:00Pm Room 325**

RE: HB-231,HD1 Relating to Public Housing

POSITION: STRONG SUPPORT

My name is Leonard Lester, a resident of public housing thank you for hearing this bill HB-231,HD1 . Hawaii Public Housing Authority, needs to make sure that health and safety for rent paying residents be a priority .

HB-231,HD1 would help stop the ongoing issues on assaults and robberies on residents that live in or around public housing, also this measure can be a tool for the Honolulu Police Department in fighting crime . We continue to have gangs members use and deal drugs on public housing property.

Please help bring safety to all residents in our communities pass HB-231,HD1 and for hearing my testimony.

Leonard Lester
Leonard Lester,
cell # 780-1308

(Mayor wright Homes)

DATE: Monday, February 14, 2011
FROM: Randy Nicky
TO: House Committee on Judiciary
RE: HB231,HD1 Relating To Public Housing
Criminal Trespass
FAX: 586-6211
Testimony - 1 page (2 page, including cover sheet)

**TO: The Honorable Gilbert Keith-Agaran,
The Honorable Karl Rhoads,
and Members of the Judiciary Committee**

**Chair
Vice Chair**

**DATE: Tuesday, February 15, 2011
2:00PM Room 325**

RE: HB-231,HD1 Relating To Public Housing

POSITION: STRONG SUPPORT

As a resident of public housing , I Randy Nicky strongly encourage the passage of this bill HB-231,HD1 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 .

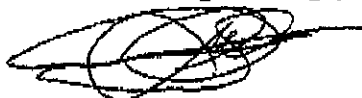
HB-231,HD1 can help alleviate or eliminate gang members that use and deal drugs on public housing property, and also on city streets that around Mayor Wright Housing, and block parties types of public drinking.

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 HB-231,HD1 .

Randy Nicky ,

Mayor Wright Homes



**TO: The Honorable Gilbert Keith-Agaran,
The Honorable Karl Rhoads,
and Members of the Judiciary Committee**

**(Chair)
(Vice Chair)**

**DATE: Tuesday, February 15,2011
2:00PM Room 325**

RE: HB 231,HD1 RELATING TO PUBLIC HOUSING

POSITION : STRONG SUPPORT

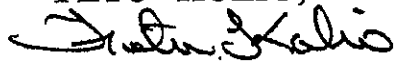
My name is Fetu Kolio, I am the Tenants Association President for Mayor Wright Homes, I also serve as a Member of the Kalihi-Palama Neighborhood Board No.15. And the block captain for our citizens patrol team in our housing complex and the surrounding community we are the eyes and ears for our community.

HB-231,HD1 would set that tone on responsibility for the Hawaii Public Housing Authority, and also a vital tool for the Honolulu Police Department on crimes of assaults and robberies by criminal elements in and around public housing .

HB-231,HD1 would help eliminate the favoritism by public housing authority on gang members that occupies public housing property, also it will tremendously help restore the integrity of services .

Thank you for hearing this bill, please help restore safety for all residents of the community, I humbly ask please pass HB-231,HD1 .

FETU KOLIO,



(Mayor Wright Homes)

(Tenants Association , President)

TO: The Honorable Gilbert Keith-Agaran,
The Honorable Karl Rhoads,
and Members of the Judiciary Committee

(Chair)
(Vice Chair)

DATE: Tuesday, February 15, 2011
2:00PM Room 325

RE: HB 231, HD1 RELATING TO PUBLIC HOUSING

POSITION: STRONG SUPPORT

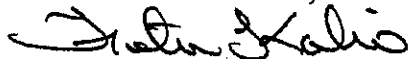
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FETU KOLIO,



(Mayor Wright Homes)

(Tenants Association, President)