

NEIL ABERCROMBIE
GOVERNOR



HAKIM OUANSAFI
EXECUTIVE DIRECTOR

STATE OF HAWAII
DEPARTMENT OF HUMAN SERVICES
HAWAII PUBLIC HOUSING AUTHORITY
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BARBARA E. ARASHIRO
EXECUTIVE ASSISTANT

Statement of
Hakim Ouansafi
Hawaii Public Housing Authority
Before the

HOUSE COMMITTEE ON HOUSING

February 8, 2012 9:10 A.M.
Room 325, Hawaii State Capitol

In consideration of
House Bill No. 1794
Relating to Public Housing

Honorable Chair and Members of the House Committee on Housing, thank you for the opportunity to provide you with comments regarding House Bill No. 1794, relating to public housing.

The Hawaii Public Housing Authority (HPHA) supports enactment of this measure which amends criminal trespass in the first degree to include public housing projects. This measure will significantly improve the ability of the HPHA to ensure a secure, livable community for our residents. HPHA will continue to work with police to refine our policies and procedures to effectively apply the provision, along with other necessary security improvements.

The HPHA appreciates the opportunity to provide the House Committee on Housing with the agency's position regarding H.B. No. 1794. We respectfully request the Committee to pass this measure favorably, and we thank you very much for your dedicated support.

POLICE DEPARTMENT
CITY AND COUNTY OF HONOLULU

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OUR REFERENCE WC-MK

February 8, 2012

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

Dear Chair Cabanilla and Members:

Re: House Bill No. 1794, Relating to Public Housing

I am Major William R. Chur of District 5 (Kalihi) of the Honolulu Police Department (HPD), City and County of Honolulu.

The HPD supports the intent of this bill which would amend the trespass law and facilitate the removal of persons who may be causing trouble or have no legitimate reason for being on the premises of public housing projects.

We would like to suggest that only one entity, the Hawaii Public Housing Authority (HPHA) or persons designated agents of the HPHA, be given the authority to determine that someone should be given a trespass warning to leave HPHA property.

Thank you for the opportunity to testify.

Sincerely,

Handwritten signature of William R. Chur in black ink.

for WILLIAM R. CHUR, Major

APPROVED:

Handwritten signature of Louis M. Kealoa in black ink.

LOUIS M. KEALOHA
Chief of Police



Committee: Committee on Housing
Hearing Date/Time: Wednesday, February 8, 2012, 9:10 a.m.
Place: Room 325
Re: Testimony of the ACLU of Hawaii in Opposition to H.B. 1794, 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. 1794 for the following reasons:

- 1) **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 §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. 1794 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.

Hon. Rep. Cabanilla, HSG Committee,
and Members Thereof
February 8, 2012
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This unnecessary, misguided and potentially unconstitutional measure does not accurately reflect sound public policy. We strongly urge this committee 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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The Honorable Representative Rida T.R. Cabanilla, Chair
Representative Ken Ito, Vice-Chair
House Committee on Housing
State Capitol, Honolulu , Hawaii 96813

RE: H.B. 1794 RELATING TO PUBLIC HOUSING

Hearing: Wednesday, February 08, 2012; 9:10am
Conference Room 325, State Capitol

My name is Maile Kanemaru, Director of Honolulu Weed and Seed, and now retired from the YMCA of Honolulu. I have been the Director of Weed and Seed for the past 12 years.

I am testifying in strong support of HB1794 to broaden the criminal trespass in the 1st degree to include a person who enters or remains unlawfully in or upon the premise of a public housing project after a reasonable request or warning to leave by housing authorities, neighborhood watch, or a police officer.

Weed and Seed is a program sponsored by the United States Attorney's Office for the District of Hawaii, in partnership with the YMCA of Honolulu.

The collaborative effort involving law enforcement, residents, non-profit organizations, community groups and private businesses has helped to reduce crime and improve the quality of life for the designated neighborhoods. It is a robust program, doing substantial good in our communities to improve the quality of life.

The State has benefited greatly from the Weed and Seed Program and that is based on the two-pronged approach of "weeding out" criminal activity and introducing "seeding" activities and programs ensuring long-term positive changes and a better quality of life for stakeholders.

Weed and Seed has been involved with Public Housing properties for the past twelve years in the Kalihi and Waipahu Communities. There have been many incidents of crime due to the unauthorized presence of people on the properties. Making criminal trespass in the first degree a misdemeanor, is a strategy to address those that remain unlawfully on the property.

We have been asked by the Administration to focus on Mayor Wright Homes to address some of the recent incidents which jeopardizes the safe and decent housing for our families in Public Housing. We will need the support of the Legislature to do this.

Thank you for your consideration.