

Honolulu, Hawaii

April 8, 2016

RE: S.B. No. 2816
S.D. 1
H.D. 2

Honorable Joseph M. Souki
Speaker, House of Representatives
Twenty-Eighth State Legislature
Regular Session of 2016
State of Hawaii

Sir:

Your Committee on Judiciary, to which was referred S.B. No. 2816, S.D. 1, H.D. 1, entitled:

"A BILL FOR AN ACT RELATING TO CRIMINAL TRESPASS,"

begs leave to report as follows:

The purpose of this measure is to:

- (1) Establish the offense of criminal trespass onto state lands as a petty misdemeanor;
- (2) Amend the offense of criminal trespass in the second degree to apply to agricultural property owned by the government; and
- (3) Require the Department of the Attorney General to report to the Legislature on the use of the new and amended statutes.

The Department of the Attorney General, Department of Land and Natural Resources, and Department of Transportation testified in support of this measure. The American Civil Liberties Union of Hawaii opposed this measure.

In *Jones v. City of Los Angeles*, 444 F.3d 1118 (9th Cir. 2006), vacated by settlement, 505 F.3d 1006 (9th Cir. 2007), the Ninth Circuit Court of Appeals held that laws that criminalize a person who is sitting, lying, or sleeping on public property when



that person is homeless and has nowhere else to go are a violation of the protections against cruel and unusual punishment guaranteed by the Eighth Amendment to the United States Constitution. The court held that "involuntary sitting, lying, or sleeping on public sidewalks" is an "unavoidable consequence of being human and homeless without shelter in the City of Los Angeles."

Similarly, in Hawaii, a person cannot be arrested or prosecuted for the mere status of homelessness. On the basis of assurances of the Attorney General, your Committee understands and expects that the State will not sanction the arrest or prosecution of homeless persons where appropriate shelter is unavailable. Your Committee urges county prosecutors to examine the relevant federal case law before prosecuting in these circumstances.

Your Committee notes that arrests themselves create criminal records and that criminal prosecutions are highly burdensome for defendants as well as for the entire criminal justice system. Arrests and prosecutions should be avoided when reasonable alternatives exist.

However, where a homeless person is unlawfully on state property and refuses available shelter, that person may be subject to arrest and prosecution pursuant to this measure. Your Committee wishes to emphasize that while a person's status as homeless may prevent arrest or incarceration for trespass as such, that status does not immunize the person from prosecution for other crimes, such as theft or vandalizing state property. This measure does not change the law in that regard.

Your Committee has amended this measure by:

- (1) Changing its findings and purpose section to reflect that this measure cannot and is not intended to abridge the constitutional rights of persons who are homeless; and
- (2) Making additional technical, nonsubstantive amendments for purposes of clarity and consistency.

As affirmed by the record of votes of the members of your Committee on Judiciary that is attached to this report, your Committee is in accord with the intent and purpose of S.B. No. 2816, S.D. 1, H.D. 1, as amended herein, and recommends that it pass Third Reading in the form attached hereto as S.B. No. 2816, S.D. 1, H.D. 2.



Respectfully submitted on
behalf of the members of the
Committee on Judiciary,

Karl Rhoads

KARL RHOADS, Chair



