



**TESTIMONY OF  
THE DEPARTMENT OF THE ATTORNEY GENERAL  
TWENTY-EIGHTH LEGISLATURE, 2016**

**LATE**

**ON THE FOLLOWING MEASURE:**

S.B. NO. 2816, S.D. 1, H.D. 1, RELATING TO CRIMINAL TRESPASS.

**BEFORE THE:**

HOUSE COMMITTEE ON JUDICIARY

**DATE:** Tuesday, April 05, 2016

**TIME:** 2:05 p.m.

**LOCATION:** State Capitol, Room 325

**TESTIFIER(S):** Douglas S. Chin, Attorney General, or  
Lance M. Goto, Deputy Attorney General, or  
Diane K. Taira, Deputy Attorney General

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Chair Rhoads and Members of the Committee:

The Department of the Attorney General supports this bill.

The purpose of this administration bill is to create the new offense of criminal trespass onto state lands under chapter 708, Hawaii Revised Statutes. It addresses issues presented by individuals remaining on: (1) improved state land when closed or otherwise restricted; and (2) unimproved state land with appropriate signage stating “Government Property—No Trespassing.” It clarifies that trespassing includes state land on or under any highway. The bill also amends the offense of criminal trespass in the second degree to clarify that it includes government agricultural lands that are not fenced, enclosed, or secured in a manner designed to exclude intruders.

Current criminal trespass laws apply comprehensively to private property, including dwellings, hotels, apartment buildings, private schools, fenced or enclosed properties, and commercial properties. With regard to state-owned land, current criminal trespass laws apply to public schools (section 708-813, Hawaii Revised Statutes (HRS)), enclosed agricultural lands (section 708-814, HRS), certain unimproved or unused land (section 708-814, HRS), state-owned public housing projects and state low-income housing projects (section 708-814, HRS), and public parks and recreational grounds (section 708-814.5, HRS).

Current criminal trespass laws do not, however, apply comprehensively to all state lands, including improved state lands, and are unclear as to their applicability to state land on, under or a part of any highway, or unfenced, unenclosed, or unsecured agricultural lands owned by the

government, and with respect to harbors. This effectively leaves a gap in current criminal trespass laws, resulting in certain types of state lands being without the protections afforded to other properties or other types of state lands. This bill is intended to close that gap. For example, section 708-814, HRS, criminal trespass in the second degree, includes a definition for “unimproved or unused lands.” This bill will help ensure that criminal trespass laws also apply to *improved* state lands, by both defining such lands and making the law directly applicable to them.

This bill would be an important crime prevention tool. It would better enable law enforcement to keep people out of harm’s way and allow the State to preserve and protect its lands. As an example, this law would assist law enforcement in keeping individuals off highways where, amongst other things, copper theft is a dangerous and expensive problem. It would allow law enforcement to address as trespassers, individuals who refuse to keep out of or away from state-owned buildings and surrounding premises that are closed for business. The bill as drafted makes criminal trespass on state lands a petty misdemeanor, which means that people in violation may be subject to arrest. Pursuant to sections 706-663 and 706-640, HRS, petty misdemeanors are punishable by a maximum of thirty days in jail or a fine of not more than one thousand dollars, though in practice, courts typically impose much smaller penalties.

The Department respectfully requests that the Committee pass this bill.

DAVID Y. IGE  
GOVERNOR OF HAWAII



**STATE OF HAWAII  
DEPARTMENT OF LAND AND NATURAL RESOURCES**

POST OFFICE BOX 621  
HONOLULU, HAWAII 96809

**Testimony of  
SUZANNE D. CASE  
Chairperson**

**Before the House Committee on  
JUDICIARY**

**Tuesday, April 5, 2016  
2:05 PM  
State Capitol, Conference Room 325**

**In consideration of  
SENATE BILL 2816, SENATE DRAFT 1, HOUSE DRAFT 1  
RELATING TO CRIMINAL TRESPASS**

Senate Bill 2816, Senate Draft 1, House Draft 1 proposes to add the offense of criminal trespass onto state lands to Part II of Chapter 708, Hawaii Revised Statutes, and amends criminal trespass in the second degree to include and apply to agricultural property owned by the government that is not fenced, enclosed or otherwise secured in a manner designed to exclude intruders. **The Department of Land and Natural Resources (Department) supports this Administration measure.**

Illegal trespass and illegal activities are a serious problem on state lands and in facilities overseen by the Department. The Department needs the criminal statutes to allow immediate removal of offenders, or the illegal activity can continue after a citation.

Statewide, many of the State's small boat harbors, trails, forest reserves, and unencumbered lands are inappropriately used by some members of the public as a venue for illegal activities, such as entry into closed and often unsafe areas, unpermitted camping, illegal alcohol consumption and disorderly conduct.

Trespass into restricted wildlife sanctuary areas, including endangered species habitat and seabird nesting areas, can cause mortality to native wildlife species. Off-road vehicles sometimes gain access to sensitive sanctuary and park areas and can cause extensive damage. Trespassers also include individuals who break and enter into restricted areas, crash, abandon and/or burn cars, dump garbage and/or steal government vehicles and equipment. Other trespassers are engaged in criminal activity related to drug transactions and/or use, and threaten or frighten Department employees and members of the public. Other violations can include illegal tree cutting or logging activity.

**SUZANNE D. CASE**  
CHAIRPERSON  
BOARD OF LAND AND NATURAL RESOURCES  
COMMISSION ON WATER RESOURCE MANAGEMENT

**KEKOA W. KALUHIWA**  
FIRST DEPUTY

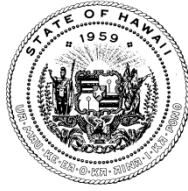
**JEFFREY. T. PEARSON, P.E.**  
DEPUTY DIRECTOR - WATER

AQUATIC RESOURCES  
BOATING AND OCEAN RECREATION  
BUREAU OF CONVEYANCES  
COMMISSION ON WATER RESOURCE MANAGEMENT  
CONSERVATION AND COASTAL LANDS  
CONSERVATION AND RESOURCES ENFORCEMENT  
ENGINEERING  
FORESTRY AND WILDLIFE  
HISTORIC PRESERVATION  
KAHOOLAWE ISLAND RESERVE COMMISSION  
LAND  
STATE PARKS

Criminal trespass laws can be an effective deterrent to these activities. Thank you for your consideration of this testimony.

DAVID Y. IGE  
GOVERNOR

**LATE**



**STATE OF HAWAII**  
**DEPARTMENT OF TRANSPORTATION**  
869 PUNCHBOWL STREET  
HONOLULU, HAWAII 96813-5097

**Testimony by:**  
FORD N. FUCHIGAMI  
DIRECTOR

Deputy Directors  
JADE T. BUTAY  
ROSS M. HIGASHI  
EDWIN H. SNIFFEN  
DARRELL T. YOUNG

IN REPLY REFER TO:

April 5, 2016  
2:05 p.m.  
State Capitol, Room 325

**S.B. 2816, S.D. 1, H.D. 1**  
**RELATING TO CRIMINAL TRESPASS**

House Committee on Judiciary

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The Department of Transportation (DOT) **strongly supports** this Administration bill which adds the offense of criminal trespass onto state lands to part II of chapter 708, Hawaii Revised Statutes, and amends criminal trespass in the second degree to include and apply to agricultural and DOT property owned by the government that is not fenced, enclosed or otherwise secured in a manner designed to exclude intruders, unpermitted hikers, copper thieves, vandals and other forms of trespassers.

This bill aims to clarify an important statute that will assist the DOT in protecting its lands, property, and facilities under its jurisdiction in providing a safe, efficient, accessible, and sustainable inter-modal transportation system that ensures the mobility of people and goods, and enhances and/or preserves economic prosperity and the quality of life.

Thank you for the opportunity to provide testimony.



Committee: Committee on Judiciary  
Hearing Date/Time: Tuesday, April 5, 2016 at 2:05 p.m.  
Place: Conference Room 325  
Re: Testimony of the ACLU of Hawaii in Opposition to S.B. 2816, S.D. 1, H.D. 1, Relating to Criminal Trespass

Dear Chair Rhoads and Members of the Committee on Judiciary:

The American Civil Liberties Union of Hawaii (“ACLU of Hawaii”) writes in opposition to S.B. 2816, S.D. 1, H.D. 1, which seeks to add an additional criminal trespass offense (“criminal trespass onto state lands”) to chapter 708 of the Hawaii Revised Statutes (“HRS”) and to broaden existing criminal trespass statutes.

Existing Hawaii law already penalizes several varieties of trespass, and adding an entirely new criminal trespass offense and broadening existing offenses would be unnecessarily cumulative. *See* HRS §§ 708-13 (criminal trespass in the first degree), -14 (criminal trespass in the second degree), -15 (simple trespass). Much of the conduct prohibited by the proposed offense of “criminal trespass onto state lands” is also covered under existing Hawaii law prohibiting sleeping or camping in a state park after park closure hours. *See* Hawaii Administrative Rule (“HAR”) §§ 13-146-5 (requiring permit for camping in a state park); HRS § 184-5 (violation of park rules constitutes a petty misdemeanor). Existing Hawaii law also covers the bill’s prohibition against remaining unlawfully on any highway. *See* HRS 711-1105(1) (prohibiting obstruction of “any highway or public passage”). This bill is therefore unnecessary.

Criminal trespass laws and other regulations prohibiting use of public lands disproportionately affect homeless individuals and families. Indeed, S.B. 2816, S.D. 1, H.D. 1 seemingly targets homeless individuals by adding redundant penalties for sleeping in state parks, lands, and highways. Criminalizing the poor does nothing to alleviate homelessness. This bill, if passed, would merely add to an existing body of law and practices that perpetuate the cycle of poverty and would result in overly harsh punishments, over-incarceration, and wasted state money. If the Legislature is concerned with a particular crime occurring on “improved state land,” the Legislature should pass legislation addressing those specific crimes, rather than overly broad legislation that sweeps in unrelated conduct and further criminalizes the status of being poor. We strongly urge this committee to defer S.B. 2816, S.D. 1, H.D. 1.

Thank you for this opportunity to testify.

Sincerely,

A handwritten signature in black ink, appearing to read "Mandy J. J. J." The signature is written in a cursive, flowing style.

Chair Rhoads and Members of the Committee

April 5, 2016

Page 2 of 2

Mandy Finlay  
Advocacy Coordinator  
ACLU of Hawaii

*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 50 years.*