



**TESTIMONY OF  
THE DEPARTMENT OF THE ATTORNEY GENERAL  
TWENTY-NINTH LEGISLATURE, 2017**

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**ON THE FOLLOWING MEASURE:**

H.B. NO. 304, RELATING TO CRIMINAL TRESPASS.

**BEFORE THE:**

HOUSE COMMITTEE ON JUDICIARY

**DATE:** Friday, February 24, 2017

**TIME:** 2:00 p.m.

**LOCATION:** State Capitol, Room 325

**TESTIFIER(S):** Douglas S. Chin, Attorney General, or  
Landon M.M. Murata, Deputy Attorney General

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Chair Nishimoto and Members of the Committee:

The Department of the Attorney General supports this bill and submits the following comments for the Committee's consideration.

This bill clarifies that violation of a "reasonable warning or request" issued pursuant to section 708-814 (1)(b), Hawaii Revised Statutes (HRS), constitutes defiance of a "lawful order" within the definition of "enter or remain unlawfully" set forth in section 708-800, HRS.

On December 13, 2016, the Hawaii Supreme Court issued a decision in State v. King, 386 P.3d 886, 893 (Haw. 2016), as amended (Dec. 22, 2016), holding the exact opposite; that a violation of a "reasonable warning or request" does *not* constitute defiance of a "lawful order." In King, the defendant had been charged with the offense of Burglary in the Second Degree. After Times Supermarket issued defendant a "reasonable warning or request" pursuant to HRS section 708-814 (1)(b), defendant went to one of the Times Supermarket locations that he had been informed he could not return to and was observed taking store property without paying for it. The burglary charge required the State to prove defendant had intentionally *entered or remained unlawfully* in a building *with intent to commit therein* a crime against a person or against property rights.

In upholding the trial court's dismissal of the burglary charge, the King court focused on the "enter or remain unlawfully" element of the offense and held that

Defendant's violation of the supermarket's "reasonable warning or request" could not be the basis to charge defendant in the case. The King court reasoned that a "reasonable warning or request" is not a "lawful order" and the Legislature did not intend for defendant's actions to be punishable as Burglary in the Second Degree. The King court does not appear to have acknowledged the difference between a person who merely violates a "reasonable warning or request," thus committing the offense of criminal trespass, and a person who does so *with the intent to commit therein a crime* against a person or against property rights, thus committing the offense of burglary.

This bill will clarify that, in the context of the definition of "enter or remain unlawfully," a "lawful order" includes a "reasonable warning or request" issued pursuant to section 708-814 (1)(b), HRS. We do not believe that this clarification will somehow escalate a misdemeanor criminal trespass charge to a felony burglary charge. A person who merely violates a "reasonable warning or request," without more, will continue to be exposed to criminal liability for a criminal trespass offense. On the other hand, a person who violates a "reasonable warning or request" *with intent to commit therein a crime* against a person or against property rights will be exposed to criminal liability for a burglary offense.

Accordingly, the Department of the Attorney General respectfully requests this bill be passed. Thank you for the opportunity to submit the Department's comments.

**From:** [mailinglist@capitol.hawaii.gov](mailto:mailinglist@capitol.hawaii.gov)  
**To:** [JUDtestimony](#)  
**Cc:** [john.m.tonaki@hawaii.gov](mailto:john.m.tonaki@hawaii.gov)  
**Subject:** Submitted testimony for HB304 on Feb 24, 2017 14:00PM  
**Date:** Thursday, February 23, 2017 2:59:08 PM  
**Attachments:** [HB304 \[Amended Public Defender testimony\].pdf](#)

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**HB304**

Submitted on: 2/23/2017

Testimony for JUD on Feb 24, 2017 14:00PM in Conference Room 325

Submitted By	Organization	Testifier Position	Present at Hearing
John Tonaki	Public Defender	Oppose	Yes

Comments: Please replace our prior submitted testimony with the attached amended testimony. Thank you

Please note that testimony submitted less than 24 hours prior to the hearing, improperly identified, or directed to the incorrect office, may not be posted online or distributed to the committee prior to the convening of the public hearing.

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**Amended Testimony of the Office of the Public Defender,  
State of Hawaii to the House Committee on  
Judiciary**

February 24, 2017

H.B. No. 304: RELATING TO CRIMINAL TRESPASS

Chair Nishimoto and Members of the Committee:

We oppose passage of H.B. No. 304 which seeks to amend the definition of the phrase “enter or remain unlawfully” in HRS § 708-800 so that a person can be held liable for the offense of Burglary 2<sup>o</sup> if the person enters or remains unlawfully in or upon commercial premises in defiance of a reasonable warning or request to leave with intent to commit therein a crime against a person or against property rights.

This bill seeks to nullify the ruling of the Hawaii Supreme Court in State v. King (issued December 13, 2016, SCWC 15-0000342) in which the court held that a defendant who shoplifted a \$55 roast from Times Supermarket could not be prosecuted under the Burglary 2<sup>o</sup> statute even though the defendant had received a prior trespass warning from a different Times store. This type of prosecution had become common under the prevailing interpretation of the Burglary statute employed by the Honolulu prosecutor’s office prior to the King ruling. The effect of this interpretation had been to transform a number of petty misdemeanor shoplifting cases into Class C felony burglary cases.

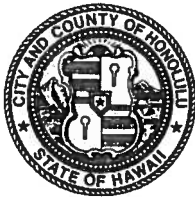
This misapplication of the Burglary law led to excessive prison sentences for minor crimes. The King decision put an end to this unjust situation and H.B. No. 304 now seeks to nullify that decision and continue these draconian prosecutions.

If the concern is over repeat shoplifters who disregard prior punishments and warnings, HRS § 708-803 Habitual property crime, punishes a person who commits multiple felony, misdemeanor and petty misdemeanor property offenses as a Class C felon. Thus the law already provides for repeat property crime offenders with harsher sentences.

Thank you for the opportunity to provide testimony in this matter.

POLICE DEPARTMENT  
CITY AND COUNTY OF HONOLULU

801 SOUTH BERETANIA STREET · HONOLULU, HAWAII 96813  
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KIRK CALDWELL  
MAYOR

LOUIS M. KEALOHA  
CHIEF

CARY OKIMOTO  
JERRY INOUE  
DEPUTY CHIEFS

OUR REFERENCE ST-NTK

February 24, 2017

The Honorable Scott Y. Nishimoto, Chair  
and Members  
Committee on Judiciary  
House of Representatives  
Hawaii State Capitol  
415 South Beretania Street, Room 325  
Honolulu, Hawaii 96813

Dear Chair Nishimoto and Members:

SUBJECT: House Bill No. 304, Relating to Criminal Trespass

I am Stason Tanaka, Captain of the Criminal Investigation Division of the Honolulu Police Department (HPD), City and County of Honolulu.

The HPD supports House Bill No. 304, Relating to Criminal Trespass.

This bill corrects a recent case law regarding trespass warnings. This law will allow for a trespass warning to be issued by a business or hotel. When an individual is found in an area of a business that is not normally open to the public (such as an office in the back of a store that is used specifically by its employees and not the public), the business may issue a trespass warning to the violator.

We believe that this legislation addresses issues created in a recent case law that affects both trespass and burglary cases. This will allow for the prosecution of these cases.

The HPD urges you to support House Bill No. 304, Relating to Criminal Trespass.

Thank you for the opportunity to testify.

APPROVED:

A handwritten signature in black ink, appearing to read "Cary Okimoto", written over a horizontal line.

Cary Okimoto  
Acting Chief of Police

Sincerely,

A handwritten signature in black ink, appearing to read "Stason Tanaka", written in a cursive style.

Stason Tanaka, Captain  
Criminal Investigation Division

DEPARTMENT OF THE PROSECUTING ATTORNEY  
**CITY AND COUNTY OF HONOLULU**

ALII PLACE  
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KEITH M. KANESHIRO  
PROSECUTING ATTORNEY

CHRISTOPHER D.W. YOUNG  
FIRST DEPUTY PROSECUTING ATTORNEY



**THE HONORABLE SCOTT NISHIMOTO, CHAIR**  
**HOUSE COMMITTEE ON JUDICIARY**  
**Twenty-Ninth State Legislature**  
**Regular Session of 2017**  
**State of Hawai'i**

February 24, 2017

**RE: H.B. 304; RELATING TO “ENTER OR REMAIN UNLAWFULLY” DEFINITION.**

Chair Nishimoto, Vice Chair San Buenaventura, and members of the House Committee on Judiciary, the Department of the Prosecuting Attorney of the City and County of Honolulu submits the following testimony in strong support of H.B. 304. This bill is part of the Department's 2017 legislative package.

H.B. 304 is in direct response to a recent Hawaii Supreme Court case, *State v. King*, 386 P.3d 886, SCWC-15-0000342 (December 13, 2016, as amended December 22, 2016) where the Department submits the Court misinterpreted the legislative intent of the charge of Burglary in the Second Degree, 708-811, H.R.S.. The purpose of this bill is to clarify that it is, and was, the Legislature's intention that a written trespass warning or “reasonable warning or request” as addressed in 708-814(b), H.R.S., to leave a commercial premises, is a “lawful order” as referenced in 708-800, H.R.S., with regard to “Enter or remain unlawfully.”

HRS Section 708-811 provides, in pertinent part, “A person commits the offense of burglary in the second degree if the person intentionally *enters or remains unlawfully* in a *building* with intent to *commit therein a crime* against a person or against property rights.” (emphases added). Significantly, the Hawai'i Legislature has specifically defined “enters or remains unlawfully,” as follows:

“Enter or remain unlawfully” means to enter or remain in or upon premises *when the person is not licensed, invited, or otherwise privileged to do so*. A person who, regardless of the person's intent, enters or remains in or upon *premises which are at the time open to the public* does so with license and privilege *unless the person defies a lawful order not to enter or remain, personally communicated to*

*the person by the owner of the premises or some other authorized person.* A license or privilege to enter or remain in a building which is only partly open to the public is not a license or privilege to enter or remain in that part of the building which is not open to the public.

(emphases added). Thus, in Hawai‘i, the Legislature has made it plain and obvious by the language of 708-800, H.R.S. that “enter[ing] or remain[ing] unlawfully” includes circumstances in which the “premises [] are at the time *open to the public*,” but “the person defies a lawful order not to enter or remain, personally communicated to the *person by the owner of the premises or some other authorized person*.” 708-800, H.R.S. “Lawful order” is not statutorily defined. The Hawaii courts have consistently stated “[r]esort to legal or other well accepted dictionaries is one way to determine the ordinary meanings of certain terms [not statutorily defined.]” *State v. Chen*, 77 Hawaii 329, 337, 884 P.2d 392m 400 (App. 1994) (quoting *Rivas v. State*, 787 S.W.2d 113, 115 (Tex.Ct.App. 1990)). Webster’s New World Dictionary (3rd College Ed. 1988) defines “lawful,” *inter alia*, as “recognized by or established by law,” and defines “order,” *inter alia*, as “a command, direction, or instruction, usually backed by authority.” Consequently, a “lawful order” is simply a command which is recognized by law. As such, a command by the owner of a premises or some other authorized person not to enter or remain on the premises (a trespass warning) is a “lawful order” as it is recognized by law.

On November 16, 2017, the Hawaii Supreme Court held oral arguments for the case, *State v. King*. During this time, the Department clarified for the Court that the plain language of Burglary in the Second Degree encompassed the factual situation of an individual violating a trespass order and then contemporaneously committing a crime within the store in which that individual was previously trespassed from. In response, the defense provided no arguments regarding the plain language of the offense to the contrary. Under the 1968 or current 2017 Hawaii Revised Statute language, Burglary in the Second Degree covered a shop or retail establishment. The 1968 version of the HRS specifically used the word “shops”, where a subsequent amendment to the Burglary in the Second Degree statute replaced “shops” with the broader language “buildings”. The plain language demonstrated that all “buildings” – “shops” included – were covered by the scope of the burglary in the second offense. There is no indication, nor legislative intent indicating that a commercial establishment or shop was ever intended to be removed from the scope of burglary in the second degree.

Nevertheless, in *State v. King*, the Hawaii Supreme Court concluded that because the language of Trespass in the Second Degree stated that the definition of “reasonable warning or request” was “[f]or the purpose of this paragraph” only, in effect, the legislature intended to exclude a “trespass warning” as a “lawful order” with respect to burglary in the second degree. At the oral argument, one of the justices appeared to believe that “lawful order” refers to “court orders” only, but in doing so, ignored the full definition of “enter or remain unlawfully” which specifically states that a “lawful order” is “personally communicated to the person by the owner of the premises or some other authorized person.” In excluding a “trespass warning” as a basis for Burglary in the Second Degree, the Court never addressed the meaning of a “lawful order” nor addressed what the legislature meant when it defined “enter or remain unlawfully” to include “[a] person who, regardless of the person’s intent, enters or remains in or upon *premises which are at the time open to the public* does so with license and privilege *unless the person defies a lawful order not to enter or remain, personally communicated to the person by the owner of the*

*premises or some other authorized person.*” In other words, the Court never addressed what the legislature was referring to in utilizing this language, if not referring to a trespass warning.

For the foregoing reasons, the Department of the Prosecuting Attorney of the City and County of Honolulu strongly supports the passage of H.B. 304. Thank you for the opportunity to testify on this matter.





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TO: COMMITTEE ON JUDICIARY & LABOR  
Representative Scott Nishimoto, Chair  
Representative Joy San Buenaventura, Vice Chair

FROM: HAWAII FOOD INDUSTRY ASSOCIATION  
Lauren Zirbel, Executive Director

DATE: Friday, Feb. 24, 2017  
TIME: 2:00 p.m.  
PLACE: Conference Room 325

RE: HB304 (Enter or Remain Unlawfully)  
Position: Support

The Hawaii Food Industry Association is comprised of two hundred member companies representing retailers, suppliers, producers, and distributors of food and beverage related products in the State of Hawaii.

Given the nature of our industry, our members have, at one point or another, encountered a situation where they have asked an individual to leave the premises for a variety of reasons, including belligerence, solicitation, vagrancy, and more commonly, theft and burglary. We are concerned about the impact of the *State v. King* because the court's interpretation makes it immensely difficult to charge trespassed individuals with a crime.

Per this case, in Dec. 2016, the Hawaii Supreme Court ruled that a business's issuance of a warning or request to leave does not qualify as a "lawful order." As a result, an individual who defies a business's request to leave a commercial premises and who then either enters or remains on the grounds with the intent to commit a crime, cannot be charged for burglary in the second degree.

This ruling is problematic because "lawful order" is not defined in statute and we, along with the Office of the Prosecuting Attorney, believe it is reasonable to infer from existing language that it was the legislature's intention to include a business's warning and trespass in that category. SB492 remedies the issue discussed above by providing clarifying language that will aid our justice system in its ability appropriately charge and convict trespassed individuals who either commit or intend to commit a crime.

Thank you for the opportunity to provide testimony.

**From:** mailinglist@capitol.hawaii.gov  
**Sent:** Wednesday, February 22, 2017 2:03 PM  
**To:** JUDtestimony  
**Cc:** victor.ramos@mpd.net  
**Subject:** \*Submitted testimony for HB304 on Feb 24, 2017 14:00PM\*

**HB304**

Submitted on: 2/22/2017

Testimony for JUD on Feb 24, 2017 14:00PM in Conference Room 325

<b>Submitted By</b>	<b>Organization</b>	<b>Testifier Position</b>	<b>Present at Hearing</b>
Victor K. Ramos	Individual	Support	No

Comments:

Please note that testimony submitted less than 24 hours prior to the hearing, improperly identified, or directed to the incorrect office, may not be posted online or distributed to the committee prior to the convening of the public hearing.

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