

# SB 1008

RELATING TO CRIMINAL  
TRESPASS.

Adds the offense of criminal trespass onto State Department of Transportation lands to the penal code.

DAVID Y. IGE  
GOVERNOR



**Testimony by:**  
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IN REPLY REFER TO:

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

February 10, 2017  
1:15 p.m.  
State Capitol, Room 225

**S.B. 1008**  
**RELATING TO CRIMINAL TRESPASS**

Senate Committee on Transportation and Energy

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The Department of Transportation (DOT) strongly **supports** this Administration bill to add a new criminal trespass section to Part II of Chapter 708, Hawaii Revised Statutes, to protect against people remaining on improved state department of transportation land when it is closed or otherwise restricted and on or under state highways.

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.



**EXECUTIVE CHAMBERS**  
HONOLULU

**DAVID Y. IGE**  
GOVERNOR

February 10, 2017

**TO:** The Honorable Senator Lorraine R. Inouye, Chair  
Senate Committee on Transportation and Energy

**FROM:** Scott Morishige, MSW, Governor's Coordinator on Homelessness

**SUBJECT: SB 1008 – RELATING TO CRIMINAL TRESPASS**

Hearing: Friday, February 10, 2017, 1:15 p.m.  
Conference Room 225, State Capitol

**POSITION:** The Governor's Coordinator on Homelessness offers the following comments in regard to this Administration bill. The Coordinator notes that when enforcement of trespass laws on state lands impacts persons experiencing homelessness, these efforts should be coordinated with homeless outreach efforts that connect homeless persons to necessary services and housing. Accordingly, the Coordinator asks for the Legislature's support of the Governor's Executive Budget request, which includes \$1.5 million for homeless outreach, and \$2 million for a stored property program that addresses property abandoned on or seized from state lands. The Coordinator defers to other executive departments in regard to statutory processes and issues related to enforcement of trespass on state lands.

**PURPOSE:** The purpose of the bill is to add the offense of criminal trespass onto State Department of Transportation lands to the penal code.

The Coordinator notes that the intent of the bill is not to criminalize homelessness, but to address issues related to theft and vandalism on state lands, as well as issues related to public safety.

The Coordinator further notes that – if or when homeless individuals are displaced or adversely impacted by the enforcement of trespass laws on state lands – state departments and agencies work with the Coordinator's office to ensure that homeless

outreach is provided. The offer of outreach is essential to provide direct assistance to unsheltered homeless households, and to build rapport that connects them to housing and services, such as Housing First, Rapid Rehousing, or shelter.

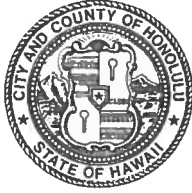
In addition to outreach, the Coordinator works with State departments and agencies to address concerns related to property or other items that may be left behind on state lands following the enforcement of trespass laws. The Legislature provided in section 171-31.5, Hawaii Revised Statutes (HRS), a process for the disposition of abandoned property on state land for all individuals, including individuals who are homeless. Section 171-31.5, HRS, requires a 30 day notice that property has been abandoned or seized, and provides a means for owners of abandoned or seized property to retrieve such property, which could include government issued identification or other government records. By following the provisions of section 171-31.5, HRS, in coordination with homeless outreach, the State works to protect the due process rights of homeless persons who may be adversely impacted by enforcement of criminal trespass laws.

Finally, the Coordinator notes that the state's strategy to address homelessness acknowledges the connection between homeless outreach and public safety efforts impacting homeless persons, and is aimed at connecting homeless persons to long-term housing as opposed to merely displacing individuals from one property to another. For example, in Kakaako Makai, the State balanced the enforcement of trespass in the public park with the provision of homeless outreach services that assisted over 290 of an estimated 300 homeless individuals to access shelter and permanent housing between August 2015 and present.

Thank you for the opportunity to testify on this bill.

POLICE DEPARTMENT  
CITY AND COUNTY OF HONOLULU

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CARY OKIMOTO  
JERRY INOUE  
DEPUTY CHIEFS

OUR REFERENCE DI-KO

February 10, 2017

The Honorable Lorraine R. Inouye, Chair  
and Members  
Committee on Transportation and Energy  
State Senate  
State Capitol, Room 210  
415 South Beretania Street  
Honolulu, Hawaii 96813

Dear Chair Inouye and Members:

Subject: Senate Bill No. 1008, Relating to Criminal Trespass

I am Darren Izumo, Major of the Wahiawa Police Station, District 2, Honolulu Police Department (HPD), City and County of Honolulu.

The HPD supports Senate Bill No. 1008, which adds the offense of criminal trespass onto State Department of Transportation lands to the penal code.

The HPD believes that the passage of this bill will assist in efforts to improve public safety and health by clarifying that persons who ignore posted signage and enter or remain on Department of Transportation lands without permission would be trespassing.

The HPD requests that your committee support the passage of Senate Bill No. 1008, Relating to Criminal Trespass.

Thank you for the opportunity to testify.

Sincerely,

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

Darren Izumo, Major  
District 2

APPROVED BY:

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

Cary Okimoto  
Acting Chief of Police



**SB1008**  
**RELATING TO CRIMINAL TRESPASS**  
Senate Committee on Transportation and Energy

February 10, 2017

10:30 a.m.

Conference Room 225

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The Office of Hawaiian Affairs (OHA) Beneficiary Advocacy and Empowerment Committee will recommend that the Board of Trustees **OPPOSE** SB1008. SB1008 would further criminalize the homeless community, many of whom may be OHA beneficiaries, without providing any substantive relief to the homelessness crisis. SB1008 raises additional concerns regarding potential impacts to Native Hawaiians' ability to exercise their constitutionally protected traditional and customary access and gathering rights.

OHA appreciates the bill's sentiment, to remove individuals from improved state Department of Transportation (DOT) land or DOT land on or under any highway; however, OHA believes that this measure would only serve to further criminalize the state's homeless population, who often seek shelter and safety on state lands. While OHA understands the difficulty of balancing the integrity of state property with the mental and physical integrity of members of our most vulnerable population, this measure is unlikely to provide any lasting or meaningful relief to the homelessness issues facing our state, and would at most simply displace homeless individuals from DOT lands to other areas. **In addition to requiring substantial funds for enforcement, this measure may in fact further exacerbate the homelessness crisis, by subjecting homeless individuals to criminal liability, thereby reducing their ability to obtain or maintain gainful employment.** Numerous existing laws already exist with regards to protecting state property and the public welfare, including vandalism and disorderly conduct laws; adding an additional layer of criminal trespass liability appears unnecessary to address these legitimate state concerns.

OHA notes that our beneficiaries may be at particular risk of being or becoming homeless, and therefore may be disproportionately affected and effectively criminalized by this measure. According to the *2015 Homeless Service Utilization Report*,<sup>1</sup> Native Hawaiians account for almost one-third of those utilizing homeless services. In addition to high homeless service utilization, 14.1% of Native Hawaiian households include a 'hidden homeless' member, compared to the only 4.2% of other households.<sup>2</sup> Research shows that Native Hawaiians also have higher levels of housing insecurity, with more than

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<sup>1</sup> UNIVERSITY OF HAWAII'I, HOMELESS SERVICE UTILIZATION REPORT 5 (2015), available at [http://uhfamily.hawaii.edu/publications/brochures/789af\\_HomelessServiceUtilization2015.pdf](http://uhfamily.hawaii.edu/publications/brochures/789af_HomelessServiceUtilization2015.pdf).

<sup>2</sup> 2016 HAWAII HOUSING PLANNING STUDY 73, available at [https://dbedt.hawaii.gov/hhfdc/files/2016/12/State\\_HHPS2016\\_Report\\_111416-FINAL-122216.pdf](https://dbedt.hawaii.gov/hhfdc/files/2016/12/State_HHPS2016_Report_111416-FINAL-122216.pdf).

half of Native Hawaiian renters live in homes they struggle to afford, and often in overcrowded conditions; notably, the affordable single-family rental units particularly needed by Native Hawaiians are in extremely short supply.<sup>3</sup> Native Hawaiians also earn \$9,100 per capita less than the state average, despite having higher workforce participation rates than the general population. Such data suggest that changes in the economic conditions of the state and country may result in a disproportionate number of Native Hawaiians becoming homeless, and targeted for criminal liability under this measure. **OHA emphasizes that the disproportionate impact of the criminal justice system on Native Hawaiians accumulates at every stage,<sup>4</sup> and may be exacerbated by this measure's further criminalization of our homeless population.**

**OHA is further concerned with SB1008's potential to have a chilling effect on Native Hawaiians' constitutionally protected traditional and customary access and gathering rights.** Modern transportation infrastructure in an ever-expanding urban environment has served to sever areas of development from intact, undisturbed natural areas. These wilderness areas are deeply valued for their cultural, spiritual, moral, and aesthetic resources beneficial to Native Hawaiians and the general public. **Native Hawaiians have and currently utilize these areas for their traditional and customary practices, which may require them to enter and traverse "improved" DOT lands.** Simply graded or otherwise "improved" DOT lands may also include resources used in the exercise of Native Hawaiian traditional and customary practices. While practitioners may continue to have rights to access and gather upheld in court, notwithstanding this measure, the prospect of potential arrest itself could significantly discourage Native Hawaiian practitioners from seeking access to such areas of cultural significance, and exercising their constitutional rights.

Therefore, OHA urges the Committee to **HOLD** SB1008. Mahalo for the opportunity to testify on this measure.

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<sup>3</sup> OFFICE OF HAWAIIAN AFFAIRS, HAWAI'I RENTERS STUDY 2013: UNDERSTANDING THE HOUSING NEEDS OF NATIVE HAWAIIAN AND NON-HAWAIIAN SECTION 8 HOUSEHOLDS (2013), available at <http://www.oha.org/wp-content/uploads/2015/01/OHA-Hawaii-Renters-Study-2013-Full-Report.pdf>.

<sup>4</sup> The Disparate Treatment of Native Hawaiians in the Criminal Justice System (2010), see <http://www.oha.org/wp-content/uploads/2015/01/native-hawaiians-criminal-justice-system.pdf>.

**From:** mailinglist@capitol.hawaii.gov  
**Sent:** Wednesday, February 8, 2017 6:34 AM  
**To:** TRE Testimony  
**Cc:** jamesjtz@aol.com  
**Subject:** \*Submitted testimony for SB1008 on Feb 10, 2017 13:15PM\*

**SB1008**

Submitted on: 2/8/2017

Testimony for TRE on Feb 10, 2017 13:15PM in Conference Room 225

<b>Submitted By</b>	<b>Organization</b>	<b>Testifier Position</b>	<b>Present at Hearing</b>
James Gauer	Individual	Support	No

Comments:

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**From:** mailinglist@capitol.hawaii.gov  
**Sent:** Tuesday, February 7, 2017 3:38 PM  
**To:** TRE Testimony  
**Cc:** mendezj@hawaii.edu  
**Subject:** \*Submitted testimony for SB1008 on Feb 10, 2017 13:15PM\*

**SB1008**

Submitted on: 2/7/2017

Testimony for TRE on Feb 10, 2017 13:15PM in Conference Room 225

<b>Submitted By</b>	<b>Organization</b>	<b>Testifier Position</b>	<b>Present at Hearing</b>
Javier Mendez-Alvarez	Individual	Support	No

Comments:

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