

DAVID Y. IGE  
GOVERNOR OF  
HAWAII



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

ROBERT K. MASUDA  
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

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  
WATER AND LAND

Friday, February 9, 2018  
10:00 AM  
State Capitol, Conference Room 325

In consideration of  
HOUSE BILL 2222  
RELATING TO CRIMINAL TRESPASS

House Bill 2222 proposes to encourage good behavior in public spaces by issuing written warnings and temporarily prohibiting individuals who engage in unlawful activity from remaining in or upon public parks or recreational grounds before imposing criminal penalties. **The Department of Land and Natural Resources (Department) opposes this bill as it seems duplicative of current state policies regarding the treatment of homeless and would make the enforcement of criminal trespass very difficult for the Department's Division of Conservation and Resources Enforcement Officers or other law enforcement officers, thereby hampering the Department's ability to effectively manage its own lands.**

The Department notes that state policy is that homeless persons should not be cited for trespass unless they are first provided:

- 1) Notice that they are camping illegally or that they have illegal property on state lands,
- 2) Information on available homeless shelters
- 3) An opportunity to pack their belongings (minimum of 30 minutes). Items they identify as important must be stored for 30 days.

If they refuse to leave after being noticed, then they can be cited for trespass.

The Department would defer to the Department of the Attorney General on any legal implications this measure will have.

Thank you for the opportunity to testify on this measure.



**EXECUTIVE CHAMBERS**  
HONOLULU

**DAVID Y. IGE**  
GOVERNOR

February 9, 2018

TO: The Honorable Representative Ryan I. Yamane, Chair  
House Committee on Water and Land

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

SUBJECT: **HB 2222 – RELATING TO CRIMINAL TRESPASS**

Hearing: Friday, February 9, 2018, 10:00 a.m.  
Conference Room 325, State Capitol

**POSITION:** The Governor's Coordinator on Homelessness respectfully opposes this measure, defers to the Department of the Attorney General in regard to legal implications, and offers comments.

**PURPOSE:** The purpose of the bill is to amend the penalty for criminal trespass onto public parks and recreational grounds by requiring law enforcement officers to provide homeless individuals who trespass onto these grounds with information regarding homeless shelters, services, facilities, and safe zones.

Homelessness remains one of the most pressing challenges facing Hawaii, and the State has adopted a comprehensive framework to address homelessness that focuses on three primary leverage points – affordable housing, health and human services, and public safety. The Coordinator works closely with multiple state agencies to implement this framework by working with State agencies and law enforcement to connect trespass and other enforcement efforts together with the offer of services and housing-focused programs, such as Housing First and Rapid Rehousing. The coordinated efforts to implement the State's framework to address homelessness have made progress in reducing the number of homeless individuals statewide. In 2017, the statewide Point in Time (PIT) count found that the number of homeless people in

Hawaii had *decreased* for the first time in eight years – a decrease of 701 people between 2016 and 2017.

The Coordinator notes that there is an existing process to ensure that the rights of homeless individuals are respected when criminal trespass laws are enforced on state lands, including parks and recreational areas. 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 both in advance of any enforcement action, as well as during the time of enforcement. 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 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.

The Coordinator notes that the passage of this measure may result in unintended consequences that adversely impact law enforcement efforts to address issues of public safety. The Coordinator defers to the Department of the Attorney General in regard to the legal implications of this measure, and to other executive agencies with oversight of state parks in regard to the practical impact of this measure on land management practices.

Thank you for the opportunity to testify on this bill.



**TESTIMONY OF  
THE DEPARTMENT OF THE ATTORNEY GENERAL  
TWENTY-NINTH LEGISLATURE, 2018**

---

**ON THE FOLLOWING MEASURE:**

H.B. NO. 2222, RELATING TO RELATING TO CRIMINAL TRESPASS.

**BEFORE THE:**

HOUSE COMMITTEE ON WATER AND LAND

**DATE:** Friday, February 9, 2018

**TIME:** 10:00 a.m.

**LOCATION:** State Capitol, Room 325

**TESTIFIER(S):** Russell A. Suzuki, Acting Attorney General, or  
Landon M.M. Murata, Deputy Attorney General

---

Chair Yamane and Members of the Committee:

The Department of the Attorney General ("Department") opposes this bill. The purpose of this bill appears to be to eliminate the criminal penalties for the offense of criminal trespass onto public parks and recreational grounds ("criminal trespass") for first and second time offenders. The Department has various legal, practical, and logistical concerns with this bill, as well as serious concerns regarding enforcement and the negative impact of this bill on law enforcement, that compel the Department to oppose the bill.

Under the current law, a person commits criminal trespass if the person: (1) violates a posted park rule, (2) based on that violation, the person ("park rule violator") is asked to leave by law enforcement, and (3) the park rule violator thereafter remains in the park. Under these circumstances, once a park rule violator has been asked to leave by law enforcement and the park rule violator chooses to remain, the park rule violator has committed criminal trespass and can be cited or arrested at the discretion of law enforcement. Under the current law, the connection between conduct and criminal liability is simple and easy to understand. The effect of the bill would be that people could engage in the exact same conduct two times before criminal liability would attach.

Additionally, while it appears to be the intent of the drafters to merely change the penalties for criminal trespass, the effect of this bill would be to change the elements that the State would have to prove to convict someone of criminal trespass. If this bill

were to become law, the State would need to prove: (1) that a person violated a posted park rule, (2) that based on that violation, the park rule violator was asked to leave by law enforcement, (3) that the park rule violator thereafter remained in the park, (4) that the same park rule violator thereafter violated a posted park rule, (5) that the same park rule violator, based on that second park rule violation, was again asked to leave by law enforcement, (6) that the same park rule violator thereafter remained in the park for the second time, (7) that the same park rule violator thereafter violated a posted park rule, (8) that the same park rule violator, based on that third park rule violation, was again asked to leave by law enforcement, and (9) that same park rule violator thereafter remained in the park for a third or subsequent time.

For the State to prove these expanded elements of criminal trespass, witnesses from the prior incidents, as well as the third and subsequent incidents, would all need to testify. There is no mechanism for keeping track of the prior incidents and warnings being given, the facts and circumstances of the incidents for which the prior warnings were issued, and the witnesses necessary to prove them. This concern is exacerbated by the fact that there are no temporal requirements or restrictions on the prior “offenses.” That is, under this bill, a park rule violator could be given a first warning, then days, weeks, months, or years later that person could be given a second warning, then a third warning, with no limitation. Legally and logistically, this expanded criminal trespass offense would thus be very difficult to prove and would require an inordinate amount of resources for the prosecution of a petty misdemeanor offense.

In addition to there being no mechanism to keep track of the prior incidents, there is no mechanism to keep track of persons who have been provided with information pursuant to the proposed subsection (3)(a) on page 3, lines 16-20, and those who are prohibited from remaining in the park for 45 days pursuant to subsection (3)(b) or up to three years pursuant to subsection (3)(c)(i). There also does not appear to be any penalty for violating the prohibition under subsection (3)(b) and (c)(i), making them essentially unenforceable.

Finally, regarding the negative impact of this bill on law enforcement, this bill undermines the authority of law enforcement. Under the current law, a park rule violator

already has every opportunity to avoid criminal liability, even after the arrival of law enforcement. If the park rule violator complies with law enforcement's request to leave, no crime has been committed. This bill, however, will essentially permit people who have already violated one or more clearly posted park rules, to then ignore a lawful order or request to leave from a law enforcement officer. If passed, the new criminal trespass law would allow park rule violators to ignore such a lawful order or request, not once, but twice, before law enforcement can do anything about it. Additionally, the requirement that law enforcement officers provide the "homeless," as that term is defined in the bill, with the information specified in the proposed subsection (3)(a), tasks law enforcement with performing the role of an outreach counselor, a role which they may not be qualified for, and further undermines their law enforcement authority.

The Department recommends this bill be held and thanks the Committee for the opportunity to testify.

DAVID Y. IGE  
GOVERNOR



STATE OF HAWAII  
**DEPARTMENT OF PUBLIC SAFETY**  
919 Ala Moana Boulevard, 4th Floor  
Honolulu, Hawaii 96814

**NOLAN P. ESPINDA**  
DIRECTOR

**Cathy Ross**  
Deputy Director  
Administration

**Jodie F. Maesaka-Hirata**  
Deputy Director  
Corrections

**Renee R. Sonobe Hong**  
Deputy Director  
Law Enforcement

No. \_\_\_\_\_

TESTIMONY ON HOUSE BILL 2222  
RELATING TO CRIMINAL TRESPASS

By

Nolan P. Espinda, Director

House Committee on Water and Land  
Representative Ryan I. Yamane, Chair  
Representative Chris Todd, Vice Chair

Friday, February 9, 2018; 10:00 a.m.  
State Capitol, Conference Room 325

Chair Yamane, Vice Chair Todd, and Members of the Committee:

The Department of Public Safety (PSD) **opposes** House Bill (HB) 2222, which proposes to amend the penalty for criminal trespass onto public parks and recreational grounds and require law enforcement officers to provide homeless individuals who trespass onto public parks and recreational grounds with information regarding homeless shelters, services, facilities, and safe zones.

First, HB 2222 proposes that for a first offense, the person shall be issued a warning; for the second offense, the person shall be banned from the public park or recreational ground for 45 days; and for the third offense, it is a petty misdemeanor and the person shall be banned for up to three years. The effect of HB 2222 is that a person would be free to engage in criminal conduct two times before criminal liability would attach, taking away law enforcement's discretion to take appropriate action for criminal conduct.

Second, there are many state and county public parks and recreational grounds across the State of Hawaii. HB 2222 is unclear if a person is banned for 45 days or up

to three years from the specific park in which he or she is found to have committed the first one or two violations, or all state and county parks under this proposal. Also, there is no temporal requirement on the length of time between “prior” warnings.

Third, there is no mechanism for keeping track of prior incidents and warnings issued and the facts and circumstances under which those warnings were given. Again, there could be multiple agencies issuing such warnings, including the Sheriff Division deputy sheriffs, Department of Land and Natural Resources conservation officers, and police officers from the Honolulu Police Department and all neighbor island counties. A deputy sheriff, or any law enforcement officer, has no means of verifying and confirming prior warnings or prohibitions issued.

Fourth, there no is penalty provision for subsequently violating a 45-day or up to three year ban. As such, it is unclear if law enforcement can take action for violation of the proposed park prohibition.

Finally, under the current statute, a person arrested or convicted of violation of criminal trespass in public parks is not prohibited from returning to the park immediately or after conviction, as long as that person complies with the posted park rules or permit. HB 2222 appears to completely ban a person from the park for 45 days for a second offense, or up to three years for a third offense.

Thank you for the opportunity to testify on this measure.



POLICE DEPARTMENT  
CITY AND COUNTY OF HONOLULU

801 SOUTH BERETANIA STREET · HONOLULU, HAWAII 96813  
TELEPHONE: (808) 529-3111 · INTERNET: www.honolulu.org



KIRK CALDWELL  
MAYOR

SUSAN BALLARD  
CHIEF

JOHN D. McCARTHY  
JONATHAN GREMS  
DEPUTY CHIEFS

OUR REFERENCE **GH-SAI**

February 9, 2018

The Honorable Ryan Yamane, Chair  
and Members  
Committee on Water & Land  
House of Representatives  
Hawaii State Capitol  
415 South Beretania Street  
Honolulu, Hawaii 96813

Dear Chair Yamane and Members:

Subject: House Bill No. 2222, Relating to the Criminal Trespass

I am Glenn Hayashi, Captain of District 1 (Central Honolulu) of the Honolulu Police Department, City and County of Honolulu.

The Honolulu Police Department opposes House Bill No. 2222, Relating to Criminal Trespass.

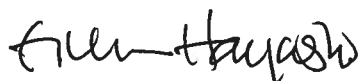
This proposed bill creates a three-tiered offense where the first and second offenses are neither violations nor crimes. Only the third offense is listed as a Petty Misdemeanor. The language associated with this bill compels law enforcement to render penalties which is the sole responsibility of the courts. This bill also compels law enforcement to identify "homeless" persons during lawful detention to issue mandatory social service information. The term "homeless" and "homeless facilities" are not clearly defined. This bill as it is currently presented is unenforceable. In addition, the Honolulu Police Department has concerns for the additional responsibility this will place on our personnel and current records management system.

The Honorable Ryan Yamane, Chair  
and Members  
Committee on Water & Land  
February 9, 2018  
Page 2

The Honolulu Police Department respectfully opposes House Bill No. 2222, Relating to Criminal Trespass.

Thank you for the opportunity to testify.

Sincerely,



GLENN HAYASHI, Captain  
District 1

APPROVED:



SUSAN BALLARD  
Chief of Police

**HB-2222**

Submitted on: 2/8/2018 1:49:57 PM

Testimony for WAL on 2/9/2018 10:00:00 AM

<b>Submitted By</b>	<b>Organization</b>	<b>Testifier Position</b>	<b>Present at Hearing</b>
cheryl		Comments	No

Comments:

Living in town, I understand the thoughts behind the bill but am not sure that it is an effective use of our law enforcement officers. Just today, I watched HPD drive by a person who obviously was living on a bench and has for some time. The amount of time and effort put towards this would seem to have better results if we truly looked at the houseless and came up with better solutions??

My other question is how does this affect Hawaiian and other traditional and cultural practitioners? Agreed they probably would not be in those areas but it is possible.



HAWAII COMMUNITY  
DEVELOPMENT AUTHORITY



KAKA'KO  
KALAELOA

David Y. Ige  
Governor

John Whalen  
Chairperson

Garett Kamemoto  
Interim Executive Director

547 Queen Street  
Honolulu, Hawaii  
96813

Telephone  
(808) 594-0300

Facsimile  
(808) 594-0299

E-Mail  
contact@hcdaweb.org

Web site

**LATE**

STATEMENT OF  
**GARETT KAMEMOTO, INTERIM EXECUTIVE DIRECTOR**  
HAWAII COMMUNITY DEVELOPMENT AUTHORITY

BEFORE THE  
**HOUSE COMMITTEE ON WATER & LAND**

Friday, February 9, 2018  
10:00 AM  
State Capitol, Conference Room 325

in consideration of

**HB 2222**  
**RELATING TO CRIMINAL TRESPASS.**

Chair Yamane, and Vice Chair Todd, and Members of the Committee.

The Hawaii Community Development Authority (HCDA) **opposes HB 2222**, because it would make it very difficult to enforce park rules and closure hours. Illegal camping is a problem in our parks forcing us to close Waterfront Park last year. It cost HCDA \$178,215 to repair damage caused by vandalism in the park. Since the park reopened, we have successfully kept illegal campers out of the parks when they close every night. This bill may impair our ability to clear illegal campers from the park and return us to the conditions that existed prior to the park closure.

HCDA requests the Committee hold HB 2222. Thank you for the opportunity to provide testimony.

**LATE**

**HB-2222**

Submitted on: 2/8/2018 7:03:08 PM

Testimony for WAL on 2/9/2018 10:00:00 AM

<b>Submitted By</b>	<b>Organization</b>	<b>Testifier Position</b>	<b>Present at Hearing</b>
Dylan Armstrong		Support	No

Comments:

**HB-2222**

Submitted on: 2/9/2018 12:11:57 AM

Testimony for WAL on 2/9/2018 10:00:00 AM

**LATE**

<b>Submitted By</b>	<b>Organization</b>	<b>Testifier Position</b>	<b>Present at Hearing</b>
Sandra D. Erickson		Oppose	No

Comments:

Dear Committee Members

I am a resident of Kakaako, almost all the public parks are either occupied by or encircled by encampments of the homeless. Those that aren't are closed for repairs secondary to damage caused by the encampments. Many sidewalks wreek of urine and trash accumulates along the streets. I am opposed to any legislation that further impedes or obstructs law enforcements timely ability to clear the parks for taxpayers and their families to use. The high density mostly high rise housing in the area make these parks very important to all the residents and their families. Please put their needs first.

It is common knowledge to everyone that many of the homeless refuse available help primarily because they don't want to follow the rules in shelters. All of us who support the legislature and all government services by paying our taxes are expected to follow the rules and you should support us for a change. Please don't pass this legislation.

Respectfully Submitted,

Sandra Erickson

Kakaako Resident

---

**From:** Mary Leffel  
**Sent:** Thursday, February 8, 2018 11:26 PM  
**To:** waltestimony  
**Subject:** Opposition to HB2222



Dear Committee Members,

Homeless have either taken over Parks in Kakaako or caused them to be closed due to massive vandalism. I am opposed to any change in the law to reduce trespass penalties solely because it disproportionately impacts the homeless. HCDA, HPD, and Sheriff don't need any more restrictions that prevent them from doing their job. Tax-paying citizens seem to be forgotten by the legislature in favor of the homeless even though most of these individuals refuse available assistance.

Mary S. Leffel  
Kakaako Resident

Sent from my iPad