

DAVID Y. IGE
Governor

JOSH GREEN
Lt. Governor



PHYLLIS SHIMABUKURO-GEISER
Chairperson, Board of Agriculture

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State of Hawaii
DEPARTMENT OF AGRICULTURE
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TESTIMONY OF PHYLLIS SHIMABUKURO-GEISER
CHAIRPERSON, BOARD OF AGRICULTURE

BEFORE THE HOUSE COMMITTEE ON FINANCE

MARCH 31, 2021

2:30 P.M.

VIA VIDEOCONFERENCE

SENATE BILL NO. 219 SD2 HD2
RELATING TO CRIMES ON AGRICULTURAL LANDS

Chairperson Luke and Members of the Committee:

Thank you for the opportunity to testify on Senate Bill 219 SD2 HD2. This measure imposes extended terms of imprisonment for certain offenses against property rights committed when on agricultural land and establishes a statewide agricultural theft task force, led by the Department of the Attorney General, to provide law enforcement with tools necessary to identify agricultural theft perpetrators. The Department supports this measure and defers to the Department of the Attorney General on logistical concerns related to the proposed task force.

The Hawaii Department of Agriculture recognizes that crimes committed on agricultural land causes significant hardship to the farmer, potentially leading to bankruptcy. Any measure that provides a stronger deterrent to criminal activity on agricultural lands would be beneficial to farmers, ranchers, producers, and landowners, including the State of Hawai'i.

Thank you for the opportunity to testify on this measure.



SB219 SD2 HD2
RELATING TO CRIMES ON AGRICULTURAL LANDS
Ke Kōmike Hale o ka ‘Oihana ‘Imi Kālā
House Committee on Finance

Malaki 31, 2021

2:30 p.m.

Lumi 308

The Office of Hawaiian Affairs (OHA) offers the following **COMMENTS** on SB219 SD2 HD2, which mandates extended terms of imprisonment for a range of property offenses committed on agricultural lands, and creates a statewide agricultural theft task force. OHA is concerned that this bill may replicate sentencing policies that have exacerbated the impacts of the criminal justice system on Native Hawaiians and the larger community, including impacts relating to the overcrowded conditions of our correctional facilities, and may also result in a chilling effect on Native Hawaiian traditional and customary practitioners without deterring the commission of the most concerning agricultural crimes.

While OHA appreciates this bill’s intent to deter agricultural crimes such as theft and vandalism, mandating extended terms of imprisonment may have significant deleterious impacts on the administration of justice, and may only exacerbate the costs of our mass incarceration crisis. **Mandatory extended sentences have been found to be ineffective solutions for crime deterrence and have instead been a significant factor in the disproportionate incarceration of communities of color, including Native Hawaiians.**¹ Moreover, mandatory extended sentences effectively provide prosecutors with much greater leverage in negotiating reduced charges and terms of imprisonment in exchange for a guilty plea, regardless of the circumstances of the offense. Judges are in a much better position to objectively review extenuating circumstances, including a person’s history, character, remorse, and rehabilitative potential, that should be considered in the sentencing of defendants, and already have the ability to apply extended sentences if any of the many aggravating factors of HRS §706-662 are met. **Notably, mandatory enhanced sentencing provisions may also further exacerbate the rampant overcrowding in our correctional facilities, and only reduce our ability to properly rehabilitate and prepare pa‘ahao for a successful reentry into the community – thereby contributing to increased recidivism and crime rates over the long term.**

In addition, OHA notes that the most concerning crimes of vandalism and agricultural theft are unlikely to be prosecuted or even deterred by mandatory enhanced sentencing. In 2019, Act 217 established the Agricultural Theft and Vandalism Pilot Project, which found that a key issue with prosecuting agricultural crimes is that producers are not reporting crimes within a reasonable amount of time for law enforcement interdiction, likely stemming from their

¹ THE OFFICE OF HAWAIIAN AFFAIRS, THE DISPARATE TREATMENT OF NATIVE HAWAIIANS IN THE CRIMINAL JUSTICE SYSTEM 46-47 (2010), available at http://www.oha.org/wp-content/uploads/2014/12/ir_final_web_rev.pdf.

perception of a historical lack of follow-through by law enforcement.² Mandatory enhanced sentences are unlikely to have an effect on this perception or on producers' willingness or ability to report crimes in a timely manner. Moreover, deterring agricultural-related crime seems to be based on the certainty of punishment, rather than the severity: as Dr. Valerie Wright of the Sentencing Project explained, "enhancing the severity of punishment will have little impact on people who do not believe they will be apprehended for their actions."³ **The temporal nature of vandalism and theft crimes – where offenders are highly unlikely to remain at the scene of the crime – makes it much less likely that those responsible for such crimes will be caught, much less punished, reducing any deterrent impact of the contemplated mandatory extended sentences.** Accordingly, the mandatory extended sentencing provisions of this measure are unlikely to deter or be applied against those committing the crimes of most significant concern.

In contrast, and significantly, OHA notes that those most likely to remain on agricultural lands while committing perceived "criminal" activity– and thereby risk being caught and subject to the mandatory enhanced sentencing provisions of this measure – are Native Hawaiian traditional and customary practitioners, seeking to perpetuate their constitutionally-protected practices on less-than-fully-developed agricultural lands. **The higher likelihood of such practitioners being interdicted and accused of "trespassing" on agricultural lands – combined with the mandatory extended sentences that could potentially be applied to their convictions, if they are not able to meet the significant burden of vindicating their rights in court – may have a substantial chilling effect on the perpetuation of Native Hawaiian traditional and customary practices.**

By only focusing on the *severity* of punishment, the mandatory enhanced sentencing provisions of this bill may only burden individuals like Native Hawaiian practitioners and those who may not even know that they are on private agricultural property, without deterring or addressing the most serious criminal activities of concern.

Mahalo nui for the opportunity to testify on this measure.

² THE STATE OF HAWAII DEPARTMENT OF AGRICULTURE, REPORT TO THE THIRTY-FIRST LEGISLATURE 2021 REGULAR SESSION STATE OF HAWAII, REPORT ON THE AGRICULTURAL THEFT AND VANDALISM PILOT PROGRAM IN RESPONSE TO ACT 217, SESSION LAWS OF HAWAII 2019 1 (2019), available at <https://hdoa.hawaii.gov/wp-content/uploads/2020/12/Ag-Theft-Vandalism-Report-final.pdf>.

³ WRIGHT, VALERIE, PH.D., THE SENTENCING PROJECT, DETERRENCE IN CRIMINAL JUSTICE EVALUATING CERTAINTY VS. SEVERITY OF PUNISHMENT (2010), available at <https://www.sentencingproject.org/wp-content/uploads/2016/01/Deterrence-in-Criminal-Justice.pdf>.

STATE OF HAWAII
OFFICE OF THE PUBLIC DEFENDER

**Testimony of the Office of the Public Defender,
State of Hawai'i to the House Committee on Finance**

March 31, 2021

S.B. No. 219, SD2 HD 2: RELATING TO CRIMES TO AGRICULTURE
LANDS

Chair Luke, Vice Chair Cullen, and Members of the Committee:

The Office of the Public Defender (“OPD”) strongly opposes Part 1 of S.B. No. 219, SD2 HD2 and respectfully requests that this portion be removed. However, the OPD does not object to the creation of a statewide agricultural theft Task Force under Part 2.

Since the issues relating to crimes on Agriculture land appear to be ones of enforcement the OPD does not oppose Part 2 of the Bill for the creation of a Task Force to review and make recommendations to the legislature. The OPD understands that something may need to be done to deal with property crimes on agriculture land. Hence, the type of recommended enhanced punishment, such as that proposed for an extended term under Part 1, should be deferred upon the investigation and report of the Agriculture Task Force.

Furthermore, Part 1 of S.B. No. 219, SD2 HD2 should be removed from the Bill for the following reasons:

- 1. Additional punitive tools, without more specific investigation and demonstrated need, is not necessary.**

Prosecutors and Judges already have a full complement of punitive tools that penalizes individuals for their crimes. Among these are maximum terms of imprisonment, repeat offender sentencing, mandatory term sentencing, consecutive offenses, enhanced fines for theft offenses. Furthermore, agriculture crimes offenders may already be punished under the extended term statute under HRS §706-662. These tools are available regardless of where a crime occurs. Given the full complement of serious punishments in the toolbox, the problem highlighted by the request for this legislation establishes that the issues are enforcement in nature. If a

defendant really deserved a harsher sentence, there are existing laws on the books to bring about a severe sentence. But criminals need to be caught first.

There has been no demonstrated need for any type of drastic special protection. The harshest prison terms, mandatory minimums and extended terms are reserved for the most dangerous of individuals in our prison systems, and there is no evidence that those committing property crimes on agriculture land need this type of treatment. Passing these types of bills is a slippery slope, as it will cause other businesses, landowners, or entities to request or even expect them to deserve this special treatment.

2. The proposal is unduly harsh and severe.

Given the current language in the Bill, there is no discretion to impose the standard indeterminate term of imprisonment or even a chance for probation for a non-violent offense simply because it took place on agriculture land as opposed to other types of property. The Bill would remove the possibility of a deferral even in cases where it would be deemed appropriate. This would be the case even if the agriculture company has received restitution and does not wish jail to be imposed. This type of mandatory enhanced sentencing disposition is not even available for some of the more egregious or serious offenses, e.g., an aggravated assault case.

Given the draconian nature of the legislation, a person charged with an offense on agricultural land will likely assert his/her right to trial, thus adding to the ever-increasing backlog of cases awaiting trial in the court system.

3. The Courts should maintain their sentencing discretion.

With national trends and movement toward criminal justice reform, SB219 SD2 HD2 is regressive by adding yet another law that removes the discretion of the courts. Courts already have the discretion to impose the proper sentence. They are in a much better position to review a person's history, character, remorse, rehabilitative efforts, or lack thereof, family support etc. The Bill would remove the possibility of probation or deferral to deserving individuals. An otherwise qualified person would not be able to get a deferral, just because of the location of the offense. In addition, with this Bill, offenders would be subject to minimum terms of imprisonment and doubling of their standard penalties, even if the prosecutor, courts, paroling authority or even victim believes it would be unjust.

4. The Proposed legislation will have unintended consequences

The law will have **unintended consequences** that will ensnare unintended individuals for mandatory and enhanced penalties. Here are a few examples:

- a) A trespassing tourist who wanders onto agriculture property will face a mandatory jail term and will not be able to receive probation or a deferral of his/her the sentence.
- b) An 18-year-old who is found guilty of committing his/her first offense is precluded from receiving probation; instead, the young adult offender will receive a prison term simply because it occurred on agriculture lands.
- c) A Native Hawaiian expressing cultural rights may trespass mistakenly onto agriculture land, and thereby will be subject to not only a mandatory minimum jail term but also an extend jail term.
- d) Teenagers hiking off the trail (which is not uncommon), unaware that they had walked onto agricultural land, innocently picked a fruit off a tree thereby committed theft. Because they unknowingly were on agricultural land, they will now be subject to the harsh penalty of mandatory jail.
- e) The homeless, the mentally ill and/or the substance abuser would commit a non-violent offense but would now be subject to imprisonment rather than receiving treatment, housing, or other assistance.
- f) All property crimes, including crimes committed by agriculture employees, will now be aggravated because it happened on agriculture land, roadway, dwelling etc. It is foreseeable that people who do not belong in jail will end up in jail.

5. Part 1 of the Bill will result in unnecessary incarceration which will require additional expense and resources.

The Bill will likely adversely impact a jail and prison system that is already struggling to reduce their numbers. HRS § 706-663, the sentencing statute for misdemeanors and petty misdemeanors does not contain the parole language and the commentary to that section specifies, “In view of this fact and in view of the fact that resources devoted to the determination of minimum terms of imprisonment have decreasing marginal utility as maximum authorized terms decrease, the Code provides for definite terms in cases of misdemeanors and petty misdemeanors.” Given the mandatory sentencing scheme many misdemeanor and petty misdemeanor cases that will fill the jails and/or prisons. Under the Bill, since Judges have no discretion, a reduction of sentence will not be possible even for a first-time offender. It is unknown whether misdemeanants serving a two-year term (for say something like Trespassing or Theft 3) will be served at Halawa Prison. How and what will the Department of Public Safety and the Hawaii Paroling Authority (“HPA”) do about them? Since HPA deals with felonies, what guidelines will they use for misdemeanors? What kind of programming can be achieved for the short-term misdemeanants? How will this impact the need for more programming? Must defendants with more serious offenses be released on parole to make room? If sentenced extended term misdemeanants are placed in OCCC instead they would not have access to any programming. What is the purpose behind having no programming for an extended period of time? How would the community benefit from this? Will there be sufficient resources to meet these burdens? And significantly, what will the cost be to the already overburdened taxpayer?

6. The proposed legislation deviates from HRS § 706-662 relating to Criteria for Extended Term Imprisonment.

Unfortunately, the proposed statute does not include language that would need to comply with the criteria set forth under HRS § 706-662 (Criteria for extended terms of imprisonment). In general, extended terms may only be imposed if there is a finding that an extended term is “**necessary for the protection of the public.**” However, as written, a defendant will be subject to an extended term automatically even if it was not necessary for the protection of the public. SB 219 SD2 HD2 bypasses this law along with other considerations regarding disposition of case under Chapter 706.

7. No State of Mind requirement makes the proposal unfair and contradicts its purpose

The proposed SB219 SD2 HD2 version is even more unfair as it does not require a state of mind to impose the extended term as it no longer requires that the person “knew or reasonably should have known that the crime was committed on agricultural land.” Neither does it include the language that the offense be committed “while negligently on agricultural land” under the SB219 SD2 version. Removing the original requirement that the “person knew or reasonably should have known that the crime was committed on agricultural land” or at least the element that it be “committed while negligently on agricultural land” contradicts its very purpose and will likely result in unintended individuals being drawn into the criminal justice system.

8. The potential outcomes may be incongruous

Finally, it seems incongruous that a person who commits a property crime on agricultural land receives a punishment twice as severe as a person who commits a property crime in a small store. The damage and cost suffered by the farmer is no greater than the damage and cost suffered by a shopkeeper. In fact, even if the total damages are greater for the shopkeeper, the same would apply. For example, a perpetrator who stole \$750 worth of goods from a farm would be punished twice as harshly than the offender who stole \$1500 of goods from a small shopkeeper.

A Burglary in the First Degree charge on AG land will carry a 20-year term versus every other type of Burglary charge (up to 10 years) that happens on a different kind of property. Is it fair that punishment is automatically doubled for a crime that happened on AG land as opposed to a hotel, public property or a mom and pop store?

Hawai‘i does not need more people in jail. Increasing penalties (by automatically imposing extended terms of imprisonment) will only continue to exacerbate the Hawai‘i prison overcrowding problem. Our jails and prisons are filled above not only design capacity but also operational capacity.¹ A significant portion of the State’s prison population are incarcerated in a contracted private, for-profit prison in Arizona; they are exiled thousands of miles away from their families, friends, and crucial support networks.

¹ Hawai‘i Correctional System Oversight Commission Annual Report December 2020, <https://ag.hawaii.gov/wp-content/uploads/2021/01/HCSOC-Final-Report.pdf>

More incarceration does not mean less recidivism or less crime. No conclusive research has indicated that increased jail incarceration has a meaningful impact on crime reduction.² In Hawai'i, our prison population has increased 670% in the last 40 years and our incarceration rate has risen to the point that if we were a nation instead of a state, we would rank in the top 20 incarcerators in the world. But this has not made us one of the safest places in the world.³

Incarceration does not come cheap. In 2017, Hawai'i spent \$255 million on corrections, accounting for 3 percent of the state's total general fund spending that year. Corrections general fund spending increased by 263 percent between 1985 and 2017.⁴ Feeding and caring for an incarcerated person costs \$198 a day in Hawai'i.⁵ This is a burden the taxpayers in Hawai'i cannot afford, including people in the agriculture industry.

Introducing additional mandatory incarceration will only worsen a criminal justice system already disparately treats Native Hawaiians and people of color.⁶ Mandatory sentencing provisions and drug offenses are severely unfair to people living in

² VERA, *The Prison Paradox: More Incarceration Will Not Make Us Safer* (2017), https://www.vera.org/downloads/publications/for-the-record-prison-paradox_02.pdf

³ VERA, *Incarceration Trends in Hawaii*, <https://www.vera.org/downloads/pdfdownloads/state-incarceration-trends-hawaii.pdf>

⁴ National Association of State Budget Officers, State Expenditure Report series, <https://www.nasbo.org/reports-data/state-expenditure-report/state-expenditure-archives>.

⁵ State of Hawaii Department of Public Safety Annual Report FY 2019, <https://dps.hawaii.gov/wp-content/uploads/2019/11/PSD-ANNUAL-REPORT-2019.pdf> at 16.

⁶ Hawaii Profile, Prison Policy Initiative, <https://www.prisonpolicy.org/profiles/HI.html>
The Disparate Treatment of Native Hawaiians in the Criminal Justice System, Office of Hawaiian Affairs (2010), <https://www.oha.org/criminaljustice#:~:text=Report%3A%20The%20Disparate%20Treatment%20of,system%20accumulates%20at%20every%20stage>
 ACLU Hawai'i, Special Report: Bias Against Native Hawaiians in Hawaii Criminal Justice System, ACLU Hawai'i (2012), https://acluhi.org/en/news/special-report-bias-against-native-hawaiians-hawaii-criminal-justice-system#_ftn4.
 Ashely Nellis, The Color of Justice: Racial and Ethnic Disparity in State Prisons, The Sentencing Project (2016), <https://www.sentencingproject.org/publications/color-of-justice-racial-and-ethnic-disparity-in-state-prisons/>.

poverty, with mental health and substance use disorders, women, and Native Hawaiians, Pacific Islanders, and Black communities and fail to make us safer.⁷

The jails are already full and overcrowded. Currently, the jail and prison populations have not been reduced. Carving out an exception for agriculture sentencing is not necessary and will only add to the growing problem. Now is certainly not the time to add another mechanism to keep people longer than they should be. Given the growing national movement and studies against mandatory sentences, it is troubling that the trend in the State of Hawai'i is to increase penalties.

For the foregoing reasons, the OPD strongly opposes Part 1 of the proposed measure. We thank you for the opportunity to comment on S.B. No. 219, SD 2 HD2.

⁷ ACLU Hawai'i, "Blueprint for Smart Justice Hawai'i" (2019), <https://50stateblueprint.aclu.org/states/hawaii/>.



Hawaii Cattlemen's Council, Inc.

COMMITTEE ON FINANCE

Rep. Sylvia Luke, Chair

Rep. Ty J.K. Cullen, Vice Chair

SB 219 SD2, HD2

RELATING TO CRIMES ON AGRICULTURAL LANDS.

Wednesday, March 31, 2021 2:30 pm

Via Video Conference

Chair Luke, Vice Chair Cullen, and Members of the Committee,

The Hawaii Cattlemen's Council **supports SB219** to impose terms of imprisonment for certain offenses against property rights committed on agricultural land. Agricultural entities struggle to operate on slim margins, and criminal activity must be deterred in order to protect our ability to provide food for the community. Any penalties to deter this activity will benefit ranchers.

We appreciate the opportunity to testify on this critical matter for our industry.

Nicole Galase
Hawaii Cattlemen's Council
Managing Director



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March 31, 2021

HEARING BEFORE THE
HOUSE COMMITTEE ON FINANCE

TESTIMONY ON SB 219, SD2, HD2
RELATING TO CRIMES ON AGRICULTURAL LANDS

Conference Room 308
2:30 PM

Aloha Chair Luke, Vice-Chair Cullen, and Members of the Committee:

I am Brian Miyamoto, Executive Director of the Hawaii Farm Bureau (HFB). Organized since 1948, the HFB is comprised of 1,800 farm family members statewide and serves as Hawaii's voice of agriculture to protect, advocate and advance the social, economic, and educational interests of our diverse agricultural community.

The Hawaii Farm Bureau supports SB 219, SD2, HD2, and any other measure which would help to deter agricultural crime in Hawaii.

Hawaii farmers are begging for help against theft, vandalism, and trespass. Something must be done to stop criminals from taking advantage of the hard work of agricultural producers, especially during this pandemic when many are on the verge of going out of business. Ag crime must be taken more seriously by the county police departments, prosecutors, and judges. If we want agriculture to be successful in Hawaii, we need to do more to catch criminals and to penalize them enough to deter repetition.

The latest USDA agricultural crime statistics show a grim picture for Hawaii farmers and ranchers trying to stay in business. Ag theft and other crimes cost Hawaii farm producers **\$14.4 million, or 10% of the 2018 Hawaii net farm income of \$142 million.**

https://www.nass.usda.gov/Statistics_by_State/Hawaii/Publications/Miscellaneous/AgTheft_2019.pdf

This includes theft of farm commodities, materials, equipment, and other property. Statewide vandalism costs were over half a million dollars. Security costs to prevent theft and/or vandalism were over \$11 million. According to the report, nearly 4,000 incidents of theft, 1,112 incidents of vandalism, and 14,262 trespassing incidents occurred during

2019. In some counties, 25% of all farms report being vandalized or stolen from. And many farmers give up on calling law enforcement because there is no follow-up.

Farmers are spending millions of dollars to install expensive security measures that haven't been effective in stopping crime, and ironically, in some cases are themselves stolen. Ag crime is increasing and farmers cannot solve this problem on their own.

Thank you for your efforts to protect and support Hawaii's farmers and ranchers.



Email: communications@ulupono.com

HOUSE COMMITTEE ON FINANCE
Wednesday, March 31, 2021 — 2:30 p.m.

Ulupono Initiative supports SB 219 SD 2 HD 2, Relating to Crimes on Agricultural Lands.

Dear Chair Luke and Members of the Committee:

My name is Micah Munekata, and I am the Director of Government Affairs at Ulupono Initiative. We are a Hawai'i-focused impact investment firm that strives to improve quality of life throughout the islands by helping our communities become more resilient and self-sufficient through locally produced food; renewable energy and clean transportation; and better management of freshwater and waste.

Ulupono supports SB 219 SD 2 HD 2, which imposes extended terms of imprisonment for certain offenses against property rights committed on agricultural lands and appropriates funds to the Department of the Attorney General to establish a statewide agricultural theft task force.

In our conversations with farmers and ranchers, one issue that keeps coming up is agricultural theft and how there is little enforcement or punishment for offenders. Agricultural lots are a prime target for thieves as there are many open entry points, farms are often located in rural and isolated areas, and punishments are minor relative to other crimes. For farmers who can afford to, precious money has to be spent on security infrastructure, monitoring, and labor to defend their agricultural operations instead of producing food. Profit margins for agricultural operations are already tight. Losing revenue and investing in repairs and security could push more local farmers and ranchers out of the agricultural sector. Ultimately, this underrated issue is one that hurts our ability to increase locally grown food in our state. By increasing the penalty of agricultural crimes on our agricultural lands, the State is making a commitment to support local producers and get control of this longstanding agriculture issue.

As Hawai'i's local food issues become increasingly complex and challenging, we appreciate this committee's efforts to look at policies that support local food production.

Thank you for this opportunity to testify.

Respectfully,

Micah Munekata
Director of Government Affairs

Investing in a Sustainable Hawai'i

COMMUNITY ALLIANCE ON PRISONS

P.O. Box 37158, Honolulu, HI 96837-0158

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COMMITTEE ON FINANCE

Rep. Sylvia Luke, Chair

Rep. Ty Cullen, Vice Chair

Wednesday, March 31, 2021

2:30 p.m.

COMMENTS ON SB 219 SD1 - CRIMES ON AG LAND

Aloha Chair Luke, Vice Chair Cullen, and Members of the Committee!

My name is Kat Brady and I am the Coordinator of Community Alliance on Prisons, a community initiative promoting smart justice policies in Hawai`i for more than two decades. This testimony is respectfully offered on behalf of the 4,100 Hawai`i individuals living behind bars or under the “care and custody” of the Department of Public Safety on any given day. We are always mindful that 1,075 of Hawai`i’s imprisoned people are serving their sentences abroad thousands of miles away from their loved ones, their homes and, for the disproportionate number of Kanaka Maoli, far, far from their ancestral lands.

We find SB 219 SD2 HD2 very disturbing because it leads off with draconian sentencing that has been abandoned by most jurisdictions because it is unsustainable. This bill leads off with the sanctions before addressing the problems of farmers.

Community Alliance on Prisons **OPPOSES Part I** of this measure. We find it shocking for its draconian sentencing that will have sweeping impacts and unintended consequences by applying enormous extensions on sentences for crimes committed on agricultural lands. For example, the sentencing scheme under Part I: Misdemeanors can be given 2 year jail terms - that would actually be a prison term - and then placed on parole. The present system is not constructed to handle this. The bill is vague on the ‘crimes’ and there was no evidence presented about the problems farms face. **In fact, the primary finding of the prior report is that the need is for improved reporting and enforcement, not deterrence.**

Community Alliance on Prisons **SUPPORTS Part II** of this measure that would create a task force to examine the problems faced by farmers and recommend an appropriate response. This is the more prudent way of addressing crime on agricultural lands - outline the problems and their frequency AND THEN develop an appropriate response. Since there is need for improved reporting and enforcement, that is a good place to start.

We, therefore, respectfully ask the committee to delete Part I and implement Part II of this measure.

Mahalo for this opportunity to testify.



Hawai'i

Committees: Committee on Finance
Hearing Date/Time: Wednesday, March 31, 2021, 2:30 p.m.
Place: Via videoconference
Re: Testimony of the ACLU of Hawai'i in Opposition to S.B. 219, S.D.2, H.D.2, Relating to Crimes on Agricultural Land

Dear Chair Luke, Vice Chair Cullen, and members of the Committee,

The American Civil Liberties Union of Hawai'i ("ACLU of Hawai'i") writes **in opposition to S.B. 219, S.D.2, H.D.2**, which imposes extended terms of imprisonment for certain crimes committed on agricultural lands.

This measure is a draconian step backwards. S.B. 219, S.D.2, H.D.2 is an expensive change that will increase overcrowding in our jails and prisons, with no demonstrated benefit to public safety. There are already laws criminalizing the conduct targeted by this bill, and there is no proof that treating offenses committed on agricultural lands more harshly than the same offense committed elsewhere will deter crime on agricultural lands. Hawai'i's families will continue to bear the human and financial cost of incarceration until we implement meaningful, community-based solutions and alternatives to incarceration. Many groups, including the ACLU of Hawai'i,¹ have proposed pathways for divestment from incarceration and reinvestment in our communities. This measure only takes us further from the progress our state so desperately needs.

For these reasons, ACLU of Hawai'i respectfully requests that the Committee defer this measure.

Sincerely,

A handwritten signature in black ink, appearing to read 'Mandy Fernandes'.

Mandy Fernandes
Policy Director
ACLU of Hawai'i

The mission of the ACLU of Hawai'i is to protect the fundamental freedoms enshrined in the U.S. and State Constitutions. The ACLU of Hawai'i fulfills this through legislative, litigation, and public education programs statewide. The ACLU of Hawai'i 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 Hawai'i has been serving Hawai'i for over 50 years.

¹In 2019, the American Civil Liberties Union, in partnership with the ACLU of Hawai'i and Urban Institute, released the Blueprint for Smart Justice Hawai'i. This report resulted from a two-year research project dedicated to identifying key reforms in Hawai'i that would cut the state's incarcerated population in half and reduce racial disparities in Hawai'i's corrections system. The report is available at <https://50stateblueprint.aclu.org/assets/reports/SJ-Blueprint-HI.pdf> and may serve as a resource as the Legislature considers future reforms.

SB-219-HD-2

Submitted on: 3/29/2021 3:01:07 PM

Testimony for FIN on 3/31/2021 2:30:00 PM

Submitted By	Organization	Testifier Position	Present at Hearing
Carolyn Eaton	Individual	Oppose	No

Comments:

Aloha, my name is Carolyn Eaton, and I'm an Oahu voter. I'm in strong opposition to this measure, which is vague rather than specific, and shows the State as unimaginative in curtailing trespass and vandalism on farm properties. How much discussion with a majority of our farmers has taken place before writing this bill and submitting it? Would collaboration involving financial support for fencing or oversight be appreciated among a majority of farmers? Such measured, less drastic, steps would seem more supportive of community stability and cohesion.

Thank you for your consideration of my views.

SB-219-HD-2

Submitted on: 3/29/2021 6:48:08 PM

Testimony for FIN on 3/31/2021 2:30:00 PM

Submitted By	Organization	Testifier Position	Present at Hearing
Courtney Mrowczynski	Individual	Oppose	No

Comments:

I **OPPOSE** SB219 SD2 HD2 for the following reasons:

- While jurisdictions are abandoning punitive/hard sentencing, Hawai`i continues to push for more draconian sentences.
- This bill is vague about what 'crimes' to which they are referring to, yet calls for enhanced sentencing.
- Why doesn't the government work with the farmers to develop better strategies than imprisonment?

SB-219-HD-2

Submitted on: 3/30/2021 2:28:02 PM

Testimony for FIN on 3/31/2021 2:30:00 PM

Submitted By	Organization	Testifier Position	Present at Hearing
Raelyn Reyno Yeomans	Individual	Oppose	No

Comments:

Strong Opposition

SB-219-HD-2

Submitted on: 3/30/2021 10:41:03 PM

Testimony for FIN on 3/31/2021 2:30:00 PM

Submitted By	Organization	Testifier Position	Present at Hearing
Carrie Ann Shirota	Individual	Oppose	No

Comments:

Aloha,

I am writing in strong opposition to SB219 SD2 HD2.

This measure would enhance sentencing for crimes occurring on agricultural lands. If enacted, this bill would lead to increases in our incarcerated population, and further exacerbate the severe overcrowding in our jails and prisons.

While I understand that agricultural theft is an issue that must be addressed, locking up more people for longer sentences is not the answer. Incarceration is extremely costly (approximately \$219 per day per person) and an ineffective response to crime (with recidivism rates of 45-60%).

Please explore other innovative strategies to mitigate agricultural theft, and hold SB219 SD2 HD2.

Mahalo,

Carrie Ann Shirota, Esq.