

DAVID Y. IGE
Governor

JOSH GREEN
Lt. Governor



PHYLLIS SHIMABUKURO-GEISER
Chairperson, Board of Agriculture

MORRIS ATTA
Deputy to the Chairperson

State of Hawaii
DEPARTMENT OF AGRICULTURE
1428 South King Street
Honolulu, Hawaii 96814-2512
Phone: (808) 973-9600 FAX: (808) 973-9613

TESTIMONY OF PHYLLIS SHIMABUKURO-GEISER
CHAIRPERSON, BOARD OF AGRICULTURE

BEFORE THE SENATE
COMMITTEE ON JUDICIARY

February 24, 2021

9:45 A.M.

VIA VIDEOCONFERENCE

SENATE BILL NO. 219 SD1
RELATING TO CRIMES ON AGRICULTURAL LANDS

Chairperson Rhoads and Members of the Committee:

Thank you for the opportunity to testify on Senate Bill 219 SD1. This measure imposes extended terms of imprisonment for certain offenses against the property rights committed on agricultural lands. The Department supports this measure.

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.



STATE OF HAWAII
OFFICE OF THE PUBLIC DEFENDER

**Testimony of the Office of the Public Defender,
State of Hawai'i to the Senate Committee on the Judiciary**

February 24, 2021

S.B. No. 219, SD1: RELATING TO CRIMES TO AGRICULTURE LANDS

Chair KARL RHOADS, Vice Chair JARRETT KEOKALOOLE and Members of the Committee:

The Office of the Public Defender (“OPD”) strongly opposes S.B. No. 219, SD1.

The Bill 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, extended term sentencing, minimum term sentencing, consecutive offenses, enhanced fines for theft offenses. These tools are available regardless of where a crime occurs. An extended term can already be sought for offenses that occur on agriculture lands. Given the full complement of serious punishments in the toolbox, the problem highlighted by the request for this legislation establishes that the issue does not appear to be a legislative problem but an enforcement issue.

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 or entities to request or even expect them to deserve this special treatment.

The Courts should maintain their sentencing discretion. With national trends and movement toward criminal justice reform, SB219 SD1 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. Person would otherwise 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.

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. 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.

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

1. 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.
2. An 18-year-old who is found guilty of committing his/her first felony offense is precluded from receiving probation; instead, the young adult offender will receive a prison term simply because it occurred on agriculture lands.
3. 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.
4. 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.
5. 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.

Unfortunately, the proposed statute does not include language that would need to comply with the criteria set forth under HRS § 706-622 (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.

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.

The proposed SB219 SD1 version is even more unfair, as it no longer requires that the person “knew or reasonably should have known that the crime was committed on agricultural land.” Removing the original requirement that the “person knew or reasonably should have known that the crime was committed on agricultural land” contradicts its very purpose and will likely result in unintended individuals being drawn into the criminal justice system.

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.

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.

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

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

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

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 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

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/>.

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

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 this proposed measure. We thank you for the opportunity to comment on S.B. No. 219, SD 1.



Email: communications@ulupono.com

SENATE COMMITTEE ON JUDICIARY
Wednesday, February 24, 2021 — 9:45 a.m.

Ulupono Initiative supports SB 219 SD 1, Relating to Crimes on Agricultural Lands.

Dear Chair Rhoads 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 1, which imposes extended terms of imprisonment for certain offenses against property rights committed on agricultural lands.

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

Phone/E-Mail: (808) 927-1214 / kat.caphi@gmail.com



COMMITTEE ON JUDICIARY

Senator Karl Rhoads, Chair

Senator Jarrett Keohokalole, Vice Chair

Wednesday, February 24, 2021

9:45 a.m.

STRONG OPPOSITION TO SB 219 SD1 - CRIMES ON AG LAND

Aloha Chair Rhoads, Vice Chair Keohokalole, 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 more than 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 1,000 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.

Community Alliance on Prisons was stunned when we saw this bill that surely underscores that Hawai`i is an outlier when it comes to justice. While the continental United States and the world are moving away from punitive sentencing, Hawai`i is ratcheting it up to justify its desire to build even more cages in Hawai`i nei for Kanaka Maoli and our cousins from Oceania. Another shameful mark for Hawai`i, known worldwide for its treatment of people who live unsheltered and suffer from a myriad of public health and social challenges.

This sad bill calls for enhanced sentencing and mandatory minimums – relics of the tough on crime era. The SD1 goes even further by removing “the specific intent requirement that the person knew or reasonably should have known that the crime was committed on agricultural land.”

An article from Australia¹ a few years ago expressed concerns about talk of mandatory minimum sentencing. Here is what they said: *The failure of mandatory sentencing to achieve its stated aims also comes at a significant cost to public money. By their very nature, such policies divert more people into the prison system and for lengthier periods of time. The result is greater cost.*

¹ Mandatory minimum sentences and populist criminal justice policy do not work—here's why, April 19, 2017, by Kate Fitz-Gibbon And James Roffee, The Conversation in Other Sciences / Social Sciences, April 19, 2017. <https://phys.org/news/2017-04-mandatory-minimum-sentences-populist-criminal.html>

A 2014 report² from the Vera Institute of Justice examines states that have reconsidered mandatory sentencing and found:

The failure of mandatory sentencing to achieve its stated aims also comes at a significant cost to public money. By their very nature, such policies divert more people into the prison system and for lengthier periods of time. The result is greater cost.
(...)

*Shifts away from mandatory penalties on the state level over the last 13 years suggest that attitudes are evolving about appropriate responses to different types of offenses and offenders. In particular, there appears to be an emerging consensus that treatment or other community-based sentences may be more effective than prison, principally for low-level drug and other specified nonviolent offenses. Although these developments augur significant future change, much remains to be done. Research is urgently required to examine how state reforms to mandatory sentences have played out in practice and is **While many of the recent mandatory sentencing reforms have been driven by fiscal concerns, there is a growing discussion that rationalizes change for reasons of fairness and justice.***

An excerpt from an article exploring mandatory minimums written by an attorney entitled, The Justice Dilemma: When the Cure is Worse than the Disease³ states:

*...Mandatory minimum sentences produce startling iatrogenic levels of mass incarceration among young African-American men in the neighborhoods. Pretext "zero tolerance" and "broken windows" arrests, pretrial detentions and prosecutions generate immediate unemployment and debt. **And they build iatrogenic "permanent CV's" that put jobs out of reach.** ...*

Community Alliance on Prisons implores the committee to hold this measure. Hawai'i has already been proven as an outlier when it comes to justice, especially for people of color who are the majority incarcerated by the state and then banished to corporate cages on the U.S. continent.

Mahalo for this opportunity to testify.

² Playbook for Change? States Reconsider Mandatory Sentences, Vera Institute of Justice, By Ram Subramaniant, Ruth Delaney, POLICY REPORT / FEBRUARY 2014. <https://www.prisonpolicy.org/scans/vera/mandatory-sentences-policy-report-v2b.pdf>

³ The Justice Dilemma: When the Cure is Worse Than the Disease, By James M. Doyle | May 18, 2017. <https://thecrimereport.org/2017/05/18/the-justice-dilemma-when-the-cure-is-worse-than-the-disease/>

SB-219-SD-1

Submitted on: 2/19/2021 9:58:02 AM

Testimony for JDC on 2/24/2021 9:45:00 AM

Submitted By	Organization	Testifier Position	Present at Hearing
Tara Rojas	Individual	Oppose	No

Comments:

I oppose SB219.

SB-219-SD-1

Submitted on: 2/19/2021 9:09:19 PM

Testimony for JDC on 2/24/2021 9:45:00 AM

Submitted By	Organization	Testifier Position	Present at Hearing
Dana Keawe	Individual	Oppose	No

Comments:

No to SB219.