



**TESTIMONY OF  
THE DEPARTMENT OF THE ATTORNEY GENERAL  
THIRTY-FIRST LEGISLATURE, 2022**

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**ON THE FOLLOWING MEASURE:**

S.B. NO. 2987, RELATING TO CRIMES ON AGRICULTURAL LANDS.

**BEFORE THE:**

SENATE COMMITTEE ON AGRICULTURE AND ENVIRONMENT

**DATE:** Monday, January 31, 2022                      **TIME:** 1:00 p.m.

**LOCATION:** State Capitol, Room 224 and Via Videoconference

**TESTIFIER(S):** Holly T. Shikada, Attorney General, or  
Adrian Dhakhwa, Deputy Attorney General

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Chair Gabbard and Members of the Committee:

The Department of the Attorney General (the Department) provides the following comments on this bill.

This bill mandates an extended term of imprisonment on all property offenses listed under parts II, III, and IV of chapter 708, Hawaii Revised Statutes, that are committed on agricultural land. This bill also seeks to appropriate funding for the Department to establish a statewide agricultural theft task force.

The Department has concerns about the mandatory imposition of an extended term of imprisonment as stated on page 1, lines 6-9. Mandatory imposition of an extended term of imprisonment means a first time offender, who would otherwise have been eligible for probation, will now receive not only an indeterminate prison term, but an indeterminate prison term double in length. Judicial discretion in imposing a sentence would be eliminated and may create unwarranted sentencing disparities. For example, an 18-year-old adult with no prior record who was caught stealing \$750 worth of papayas from a farm would be sentenced to a 10-year prison term. In contrast, a career criminal who steals a designer handbag worth \$750 would still be eligible to be sentenced to probation (with the possibility of no jail term).

The mandatory imposition of an extended term of imprisonment appears inconsistent with existing laws including sections 706-605.1 (Intermediate sanctions;

eligibility; criteria and conditions), 706-606 (Factors to be considered in imposing a sentence), 706-620 (Authority to withhold sentence of imprisonment), 706-621 (Factors to be considered in imposing a term of probation), and 706-622.9 (Sentencing for first-time property offenders; expungement), Hawaii Revised Statutes.

To address this inconsistency, the Department recommends inserting wording on page 1, line 6, to make subsection (1) read as follows:

(1) Notwithstanding any other law to the contrary, the court shall sentence a person convicted of an offense under part II, III, or IV of this chapter that is committed while on agricultural land to an extended term of imprisonment.

This bill also references an “intermediate” term of imprisonment (on page 1, lines 12, 14, and 16, and page 2, line 1). This appears to have been an unintentional oversight and should be corrected to read an “indeterminate” term of imprisonment, consistent with existing law.

Finally, providing further details regarding the scope and functions of the “statewide agricultural theft task force,” as established in part II of this bill, would provide guidance to the Department, including identifying participating agencies and delineating the task force’s overall goals and objectives.

The Department appreciates the opportunity to provide comments.

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  
Agriculture and Environment**

January 31, 2022

S.B. No. 2987: RELATING TO CRIMES ON AGRICULTURE LANDS

Chair Gabbards, Vice Chair Nishihara, and Members of the Committee:

The Office of the Public Defender strongly opposes S.B. No. 2987.

**S.B. No. 2987 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 sentencing, and enhanced fines for theft offenses. An extended term sentence can already be sought for offenses that occur on agriculture lands, as these tools are available regardless of the location of the alleged crime. Given the full complement of serious punishments already available, the problem highlighted by the request for this legislation establishes that the issue is not 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 this special treatment.

**S.B. No. 2987 is unduly harsh and severe.** Given the current language in the measure, there is no discretion to impose the existing standard indeterminate term of imprisonment or probation for a non-violent offense. In addition, the measure 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 landowner or leaseholder received restitution and did not wish any 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., assault second degree, assault first degree, robbery second degree, sexual assault second degree, burglary first degree).

The law will have *unintended consequences* that will subject individuals who have no criminal record to 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 guilty plea.
2. An 18-year-old who is found guilty of committing his/her first felony offense is precluded from receiving probation or a deferral; instead, the young adult offender will receive a mandatory prison term simply because the crime occurred on agriculture lands.
3. A Native Hawaiian expressing cultural rights may mistakenly trespass onto agriculture land and thereby will be subject to not only a mandatory minimum jail term but also an extended jail term.
4. Teenagers hiking off the trail (which is certainly not uncommon), unaware that they had walked onto agricultural land, innocently picking fruit off a tree, will be subject to the harsh and unjust penalty of mandatory jail because they were unknowingly on agricultural land.
5. The homeless, the mentally ill and/or the substance abuser committing a non-violent offense on agricultural land would be subject to imprisonment rather than receiving treatment, housing, or other rehabilitative 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, the bill mandates that a defendant will automatically be subject to an extended term of imprisonment 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.

Finally, it seems incongruous that an individual who commits a property crime on agricultural land receives a punishment twice as severe as an individual who commits a crime anywhere else. The damage and cost suffered by the farmer is no greater than the damage and cost suffered by any other victim. For example, a defendant who steals \$750 from a farm owned by large corporation will be punished twice as harshly as a defendant who stole \$1500 worth of goods from a mom-and-pop owned store in urban Honolulu.

**The Courts should maintain their sentencing discretion.** With national trends moving toward criminal justice reform, S.B. No. 2987 is regressive by adding yet another law that removes the discretion of the courts. Courts already have and should maintain the discretion to impose the appropriate 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 (pursuant to HRS § 853-1) to deserving individuals merely 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, the judges, the Hawai'i Paroling Authority or even the victims believe it would be unnecessary and unjust.

**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.<sup>1</sup> 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.<sup>2</sup> 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

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

<sup>2</sup> 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](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.<sup>3</sup>

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.<sup>4</sup> Feeding and caring for an incarcerated person costs \$198 a day in Hawai'i.<sup>5</sup> 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.<sup>6</sup> 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.<sup>7</sup>

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

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

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

<sup>5</sup> 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.

<sup>6</sup> *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](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/>.

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

to add another mechanism to keep people incarcerated 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 Office of the Public Defender strongly opposes this proposed measure. We thank you for the opportunity to comment on SB No. 2987.

**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**  
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**TESTIMONY OF PHYLLIS SHIMABUKURO-GEISER**  
**CHAIRPERSON, BOARD OF AGRICULTURE**

**BEFORE THE SENATE COMMITTEE ON**  
**AGRICULTURE AND ENVIRONMENT**

**JANUARY 31, 2022**

**1:00 P.M.**

**VIA VIDEOCONFERENCE**

**SENATE BILL NO. 2987**  
**RELATING TO CRIMES ON AGRICULTURAL LANDS**

Chairperson Gabbard and Members of the Committee:

Thank you for the opportunity to testify on Senate Bill 2987. This measure imposes extended terms of imprisonment for offenses 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 Hawaii.

Thank you for the opportunity to testify on this measure.





**DAVID Y. IGE**  
Governor

**JOSH GREEN**  
Lt. Governor



**JAMES J. NAKATANI**  
Executive Director

STATE OF HAWAII  
**AGRIBUSINESS DEVELOPMENT CORPORATION**

235 S. Beretania Street, Room 205  
Honolulu, HI 96813  
Phone: (808) 586-0186 Fax: (808) 586-0189

TESTIMONY OF JAMES J. NAKATANI  
EXECUTIVE DIRECTOR  
AGRIBUSINESS DEVELOPMENT CORPORATION

BEFORE THE COMMITTEE ON AGRICULTURE AND ENVIRONMENT  
Monday, January 31, 2022  
1:00 p.m.

SENATE BILL NO. 2987  
RELATING TO CRIMES ON AGRICULTURAL LANDS

Chairperson Gabbard and Members of the Committee:

Thank you for the opportunity to testify on Senate Bill No. 2987. The Agribusiness Development Corporation (ADC) strongly supports Senate Bill No. 2987, which imposes extended terms of imprisonment for certain offenses against property rights committed on agricultural lands and establishes a Statewide Agricultural Theft Task Force.

Agricultural theft and vandalism are serious problems for Hawaii's farmers and ranchers. Crimes on agricultural lands are on the rise and continues to plague landowners and producers statewide as their crops and equipment remain a target for thieves.

The ADC appreciates and supports the Legislature's efforts to address the growing concern amongst the agriculture community by imposing extended terms of imprisonment to serve as a deterrent.

Thank you for your consideration of this bill.

DAVID Y. IGE  
GOVERNOR



CRAIG K. HIRAI  
DIRECTOR

GLORIA CHANG  
DEPUTY DIRECTOR

EMPLOYEES' RETIREMENT SYSTEM  
HAWAII EMPLOYER-UNION HEALTH BENEFITS TRUST FUND  
OFFICE OF THE PUBLIC DEFENDER

**STATE OF HAWAII**  
**DEPARTMENT OF BUDGET AND FINANCE**  
P.O. BOX 150  
HONOLULU, HAWAII 96810-0150

ADMINISTRATIVE AND RESEARCH OFFICE  
BUDGET, PROGRAM PLANNING AND  
MANAGEMENT DIVISION  
FINANCIAL ADMINISTRATION DIVISION  
OFFICE OF FEDERAL AWARDS MANAGEMENT (OFAM)

**WRITTEN ONLY**  
TESTIMONY BY CRAIG K. HIRAI  
DIRECTOR, DEPARTMENT OF BUDGET AND FINANCE  
TO THE SENATE COMMITTEE ON AGRICULTURE AND ENVIRONMENT  
ON  
SENATE BILL NO. 2987

**January 31, 2022**  
**1:00 p.m.**  
**Room 224 and Videoconference**

**RELATING TO CRIMES ON AGRICULTURAL LANDS**

The Department of Budget and Finance (B&F) offers comments on this bill.

Senate Bill No. 2987 adds a new section to Chapter 708, HRS, to impose extended terms of imprisonment for certain offenses against property rights when committed on agricultural land. This bill also appropriates an unspecified amount of general funds in FY 23 for the Department of the Attorney General to establish a statewide agricultural theft task force to provide law enforcement with the necessary tools to identify agricultural theft perpetrators.

B&F notes that the federal Coronavirus Response and Relief Supplemental Appropriations Act requires that states receiving Elementary and Secondary School Emergency Relief (ESSER) II funds and Governor's Emergency Education Relief II funds must maintain state support for:

- Elementary and secondary education in FY 22 at least at the proportional level of the state's support for elementary and secondary education relative to the state's overall spending, averaged over FYs 17, 18 and 19; and

- Higher education in FY 22 at least at the proportional level of the state's support for higher education relative to the state's overall spending, averaged over FYs 17, 18 and 19.

Further, the federal American Rescue Plan (ARP) Act requires that states receiving ARP ESSER funds must maintain state support for:

- Elementary and secondary education in FY 22 and FY 23 at least at the proportional level of the state's support for elementary and secondary education relative to the state's overall spending, averaged over FYs 17, 18 and 19; and
- Higher education in FY 22 and FY 23 at least at the proportional level of the state's support for higher education relative to the state's overall spending, averaged over FYs 17, 18 and 19.

The U.S. Department of Education has issued rules governing how these maintenance of effort (MOE) requirements are to be administered. B&F will be working with the money committees of the Legislature to ensure that the State of Hawai'i complies with these ESSER MOE requirements.

Thank you for your consideration of our comments.



COMMITTEE ON AGRICULTURE AND ENVIRONMENT  
Senator Mike Gabbard, Chair  
Senator Clarence K. Nishihara, Vice Chair

**SB2987**  
RELATING TO CRIMES ON AGRICULTURAL LANDS

Monday, January 31, 2022, 1:00 PM  
VIA VIDEOCONFERENCE

Chair Gabbard, Vice Chair Nishihara, and Members of the Committee,

The Hawaii Cattlemen's Council (HCC) is the Statewide umbrella organization comprised of the five county level Cattlemen's Associations. Our member ranchers represent over 60,000 head of beef cows; more than 75% of all the beef cows in the State. Ranchers are the stewards of over 750 thousand acres of land in Hawaii, or 20% of the State's total land mass. We represent the interests of Hawaii's cattle producers.

The Hawaii Cattlemen's Council strongly **supports SB2987** to impose extended terms of imprisonment for offenses committed on agricultural lands and appropriate funds to establish an agricultural theft task force. 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, and the proper enforcement is needed in order for the deterrence to be effective.

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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SENATE COMMITTEE ON AGRICULTURE & ENVIRONMENT  
Monday, January 31, 2022 — 1:00 p.m.

**Ulupono Initiative supports SB 2987, Relating to Crimes on Agricultural Lands.**

Dear Chair Gabbard 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 the 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 2987**, which imposes extended terms of imprisonment for certain offenses against property rights committed when 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*



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JANUARY 31, 2022

HEARING BEFORE THE  
SENATE COMMITTEE ON AGRICULTURE AND ENVIRONMENT

**TESTIMONY ON SB 2987**  
RELATING TO CRIMES ON AGRICULTURAL LANDS

Conference Room 224 & Videoconference  
1:00 PM

Aloha Chair Gabbard, Vice-Chair Nishihara, 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 2987**, 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 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](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.

**SB-2987**

Submitted on: 1/30/2022 1:09:39 PM

Testimony for AEN on 1/31/2022 1:00:00 PM

<b>Submitted By</b>	<b>Organization</b>	<b>Testifier Position</b>	<b>Remote Testimony Requested</b>
Chris Manfredi	Testifying for Hawaii Coffee Association	Support	No

Comments:

Hawaii Coffee Association supports SB2987!

Mahalo!



**SB-2987**

Submitted on: 1/30/2022 2:50:38 PM

Testimony for AEN on 1/31/2022 1:00:00 PM

<b>Submitted By</b>	<b>Organization</b>	<b>Testifier Position</b>	<b>Remote Testimony Requested</b>
Bronson Azama	Individual	Support	No

Comments:

This bill is long overdue, it's time we bolster the spaces in which we provide food for our communities. There needs to also be efforts to bolster cold-storage capacity in each of the 6 traditional moku (districts) on this island. These are to address issues around distribution, storage capacity, and emergency preparedness.