



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

ON THE FOLLOWING MEASURE:

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

BEFORE THE:

SENATE COMMITTEES ON JUDICIARY AND ON WAYS AND MEANS

DATE: Wednesday, March 2, 2022 **TIME:** 9:30 a.m.

LOCATION: State Capitol, Room 211, Via Videoconference

TESTIFIER(S): **WRITTEN TESTIMONY ONLY.**
(For more information, contact Adrian Dhakhwa,
Deputy Attorney General, at 808-586-1160)

Chairs Rhoads and Dela Cruz and Members of the Committees:

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) [~~The~~] 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. Hawaii does not have “intermediate” terms of imprisonment.

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 HAWAI‘I
OFFICE OF THE PUBLIC DEFENDER

**Testimony of the Office of the Public Defender,
State of Hawai‘i to the Senate Committee on Ways
and Means and Senate Committee on Judiciary**

March 2, 2022

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

Chairs Dela Cruz and Rhoads, Vice Chairs Keith-Agaran and Keohokalole, and Members of the Committees:

The Office of the Public Defender strongly opposes SECTION 1 of S.B. No. 2987 but supports SECTION 2 of this measure.

Drafting Concerns

At the outset, we believe that this measure includes a significant drafting error. On page 1, line 12 through page 2, line 1, the measure uses the term “intermediate” to describe the term of imprisonment (e.g., “intermediate” twenty-year term of imprisonment). The correct term is “indeterminate,” as used in HRS § 706-661.

Furthermore, the phrase “intermediate [indeterminate] two-year term of imprisonment” and “indeterminate [indeterminate] sixty-day term of imprisonment,” should not be applied to misdemeanor or petty misdemeanor offenses, respectively. *See* page 1, line 16 through page 2, line 2. An indeterminate term of imprisonment, which is only used in conjunction with felony offenses, means that a sentencing judge imposes the maximum term but that a minimum term is determined by the Hawai‘i Paroling Authority (“HPA”). Misdemeanor and petty misdemeanor cases are not reviewed by the HPA.

“Special Class” Victims

This measure essentially creates a “special class” of victims -- agricultural landowners and leaseholders. However, creating this “special class” devalues the lives and property of other victims. It is 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 elsewhere. A defendant who steals \$800 from a farm owned by a large corporation will be punished twice as harshly as a defendant

who stole \$800 worth of goods from a mom-and-pop owned store in Chinatown or in Wahiawa. The former receives a ten-year indeterminate prison term while the latter is eligible for probation or a deferral. *Is the Chinatown storekeeper who suffers theft loss or the Wahiawa business that suffered property damage less important than the corporate farmer with deep pockets?*

Moreover, no one will argue that Class B felony offenses against persons such as assault 1st degree, sexual assault 2nd degree, burglary 1st degree, or robbery 2nd degree are more serious and egregious than property crimes such as theft and criminal property damage. However, under this measure, a thief convicted of stealing \$20,000 will serve a harsher sentence than the sex offender convicted of sexual assault 2nd degree. The thief will be serving a 20-year indeterminate term while the sex offender is subject to only a 10-year prison term and is eligible to be placed on probation.

With regard to misdemeanors, everyone can agree that the crime of abuse of family and household members (“AFHM”) is a more serious and egregious offense than a property crime. If this measure passes, however, an abuser convicted of AFHM is subject to a one-year maximum jail term while the thief who stole \$800 worth of agricultural product is subject to a two-year maximum jail term. Moreover, the abuser is eligible for probation. *Is a domestic abuse victim who was traumatized and/or injured less important than the corporate landowner who had \$300 worth of fruit stolen from their agricultural land?*

With regard to petty misdemeanors, no one would dispute that the offense of operating a vehicle while under the influence of an intoxicant (OVUII) is far more serious and egregious than trespassing 2nd degree. But under this measure, the drunk driver receives no jail while the trespasser (who may have a clean criminal record) will have to serve a mandatory jail term. Moreover, the maximum jail term for a first-time drunk driver is five days; the maximum jail term for a first-time offender who trespassed on agricultural land is sixty days.

S.B. No. 2987 is not necessary

S.B. No. 2987 seeks to impose extended terms of imprisonment for crimes committed on agricultural lands. Prosecutors and judges, however, already have a full complement of punitive tools that penalizes individuals for their crimes, including the imposition of extended term sentences pursuant to HRS § 706-661. Prosecutors and judges can also impose consecutive sentences and impose mandatory minimum sentences for repeat offenders.

An extended term sentence pursuant to HRS § 706-661 can already be sought for offenses that occur on agricultural lands, as these tools are available regardless of the location of the alleged crime.

Moreover, the imposition of extended term sentences for all offenses, including property offenses committed on agricultural land, should be subject to the criteria set forth under HRS § 706-662. An extended term should be imposed only if there is a finding that an extended term is “necessary for the protection of the public.” However, as written, this measure 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 full complement of serious punishments already available, the problem highlighted by the request for this legislation establishes that the problem is not a legislative issue but an enforcement issue.

There has been no demonstrated need for any type of drastic special protection. The harshest prison terms -- mandatory minimum sentences, consecutive sentences, 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 agricultural land will automatically need this type of treatment. Passing these types of measures is a slippery slope, as it will cause other businesses or entities to request or even expect this special treatment.

Removing judges’ discretion will result in cruel and harsh punishment

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 judges. Courts should maintain the discretion to impose the appropriate sentence. They are in a much better position to review a person’s history, character, remorse, family support, rehabilitative efforts, or lack thereof.

This measure 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 measure, 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.

Without judges exercising their discretion, this measure will certainly 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 agricultural property will be charged with trespassing 2nd degree, a petty misdemeanor who now must serve a mandatory jail term. Such a tourist should be able to receive probation or a deferral of his/her guilty plea, but the sentencing judge will have no choice but to incarcerate the tourist.
2. Similarly, a Native Hawaiian exercising traditional gathering rights may mistakenly trespass onto agricultural land and thereby be subject to a mandatory jail term. Again, this individual should be able to receive probation or a deferral.
3. 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 agricultural lands.
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.

S.B. No. 2987 is unduly cruel and harsh

Given the current language in this measure, there is no discretion to impose the existing standard indeterminate term of imprisonment or probation for a non-violent offense. In addition, this 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 agricultural landowner or leaseholder received restitution and did not wish any jail to be imposed.

This type of mandatory extended sentencing disposition for Class C and Class B felony offenses is not even imposed for the more egregious or serious Class B felony offenses such as assault 1st degree, robbery 2nd degree, sexual assault 2nd degree, burglary 1st degree. Offenders of the agricultural property crimes will be punished more severely than offenders of the aforementioned offenses against the person.

Moreover, extended jail terms and mandatory jail sentences are not imposed for more serious or egregious misdemeanors and petty misdemeanors such as AFHM (misdemeanor) and OVUII (petty misdemeanor).

Statewide Agricultural Task Force

Since the issues relating to crimes on agricultural land appear to be ones of enforcement, the OPD does not oppose SECTION 2 of the measure, which creates a statewide agricultural task force to provide law enforcement with the tools necessary to identify agricultural theft perpetrators.

Conclusion

For the foregoing reasons, the Office of the Public Defender strongly opposes SECTION 1 of this measure.

We thank you for the opportunity to comment on SB No. 2987.

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 COMMITTEES ON WAYS AND MEANS AND JUDICIARY
ON
SENATE BILL NO. 2987

March 2, 2022
9:30 a.m.
Room 211 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, with respect to the general fund appropriation in this bill, 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.

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
WAYS AND MEANS

MARCH 2, 2022

10:15 A.M.

VIA VIDEOCONFERENCE

SENATE BILL NO. 2987
RELATING TO CRIMES ON AGRICULTURAL LANDS

Chairperson Dela Cruz 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.



COMMUNITY ALLIANCE ON PRISONS

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COMMITTEE ON JUDICIARY

Senator Karl Rhoads, Chair

Senator Jarrett Keohokalole, Vice Chair

COMMITTEE ON WAYS AND MEANS

Senator Donovan Delacruz, Chair

Senator Gilbert Keith-Agaran, Vice Chair

Wednesday, March 2, 2021

9:30 a.m.

OPPOSITION TO SB 2987 - ENHANCED SENTENCES FOR CRIMES ON AG LAND

Aloha Chairs Rhoads and Delacruz, Vice Chairs Keohokalole and Keith-Agaran and Members of the Committees!

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 4,052 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 1,111 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*

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>

divert more people into the prison system and for lengthier periods of time. The result is greater cost.

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.

*There is one, and only one, thing in modern society more hideous than crime -
namely, repressive justice.*

Simone Weil, French philosopher

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/>



Email: communications@ulupono.com

SENATE COMMITTEES ON JUDICIARY AND WAYS & MEANS
Wednesday, March 2, 2022 — 9:30 a.m.

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

Dear Chair Rhoads, Chair Dela Cruz, and Members of the Committees:

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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March 2, 2022

HEARING BEFORE THE
SENATE COMMITTEE ON JUDICIARY
SENATE COMMITTEE ON WAYS AND MEANS

TESTIMONY ON SB 2987
RELATING TO CRIMES ON AGRICULTURAL LANDS

Conference Room 211 & Videoconference
9:30 AM

Aloha Chairs Rhoads and Dela Cruz, Vice Chairs Keohokalole and Keith-Agaran, and Members of the Committees:

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

The Hawai'i Farm Bureau supports SB 2987, and any other measure which would help to deter agricultural crime in Hawai'i.

Hawai'i 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 Hawai'i, 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 Hawai'i farmers and ranchers trying to stay in business. Ag theft and other crimes cost Hawai'i farm producers **\$14.4 million, or 10% of the 2018 Hawai'i net farm income of \$142 million.**

https://www.nass.usda.gov/Statistics_by_State/Hawai'i/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 Hawai'i's farmers and ranchers.

LATE

SB-2987

Submitted on: 3/1/2022 10:53:04 AM

Testimony for JDC on 3/2/2022 9:30:00 AM

Submitted By	Organization	Testifier Position	Remote Testimony Requested
Janet L Pappas	Individual	Support	No

Comments:

Dear JDC/WAM

I have personally heard from two small farmers who suffered significant losses due to theft at the HARC facility in Kunia. Farming is a difficult way to make a living as it is, and its benefits to Hawaii are many. We need to ensure that theft does not add to their burden.

Please pass this bill (SB2987).

Sincerely,

Jan Pappas

Aiea, Hawaii 96701