

STATE OF HAWAI'I
OFFICE OF THE PUBLIC DEFENDER

**Testimony of the Office of the Public Defender,
State of Hawai'i to the House Committee on
Judiciary & Hawaiian Affairs**

March 14, 2023

S.B. No. 739: RELATING TO DESECRATION

Chair Tarnas, Vice Chair Takayama, and Members of the Committee:

The Office of the Public Defender (OPD) offers comment on S.B. No. 739.

This measure seeks to increase protection of the State's cultural and historical resources and facilitate the enforcement of state law prohibiting acts of desecration by reducing the requisite state of mind for the criminal offense of desecration from "intentionally" to "knowingly," and by simplifying the definition of "desecration." To achieve this purpose, the bill strikes the term "intentionally" from the statute and inserts the term "knowingly":

(1) A person commits the offense of desecration if the person
[~~intentionally~~] knowingly desecrates:

See page 2, lines 10-11.

The OPD suggests that rather than striking the term "intentionally," the Committee should amend the bill by inserting the phrase "or knowingly" as follows:

(1) A person commits the offense of desecration if the person
intentionally or knowingly desecrates:

The phrase "intentionally or knowingly" will accomplish the same purpose and reduce the state of mind to "knowingly." The phrase will also make the desecration statute consistent with most other criminal statutes in which the requisite state of mind is "knowingly." For example, the requisite state of mind for the criminal

property damage offenses, which is similar to the desecration statute,¹ is “intentionally or knowingly”:

HRS § 708-821 provides, in pertinent part,

(1) A person commits the offense of criminal property damage in the second degree if by means other than fire:

- (a) The person *intentionally or knowingly* damages the property of another, without the other’s consent, by the use of widely dangerous means;
- (b) The person *intentionally or knowingly* damages the property of another, without the other’s consent, in an amount exceeding \$1,500; or
- (c) The person *intentionally or knowingly* damages the agricultural equipment....

HRS § 708-822 provides, in pertinent part:

(1) A person commits the offense of criminal property damage in the third degree if by means other than fire:

- (b) The person *intentionally or knowingly* damages the property of another, without the other’s consent, in an amount exceeding \$500....

HRS § 708-823 provides, in pertinent part:

(1) A person commits the offense of criminal property damage in the fourth degree if by means other than fire, the person *intentionally or knowingly* damages the property of another without the other’s consent.

(Emphasis added).

Thank you for the opportunity to comment on S.B. No. 739.

¹ The commentary to HRS § 711-1107 (offense of desecration) suggests that the offense of desecration is related to criminal property damage offenses:

Damage by desecration is treated separately from other types of *property damage* because the sense of outrage produced by such acts is out of proportion to the monetary value of the damage. Thus, desecration is a misdemeanor, although many such cases might otherwise be petty misdemeanors under § 708-823 because the object desecrated is worth less than \$50.



SB739
RELATING TO NATIVE HAWAIIAN AFFAIRS
House Committee on Judiciary and Hawaiian Affairs

March 14, 2023

2:00 PM

Room 325 &
Videoconference

The Council for Native Hawaiian Advancement (CNHA) **SUPPORTS** SB739, which will provide greater protection for Hawai'i's sacred cultural and historic sites by enhancing the state's enforcement tools.

Among Hawai'i's most prized treasures are our cultural and historic sites. They connect Native Hawaiians with our kūpuna and traditions. Importantly, these sites are part of a living culture, passed down through the generations and still practiced today. Unfortunately, these sites are often found in easily accessible public spaces, leaving them vulnerable to abuse, vandalism, and desecration. SB739 will bolster law enforcement's ability to protect these sites by making it easier to pursue charges against offenders.

In closing, CNHA urges the committee to PASS SB739. Mahalo for the opportunity to testify.

Respectfully,



J. Kūhiō Lewis, CEO
Council for Native Hawaiian Advancement

About the Council for Native Hawaiian Advancement

The Council for Native Hawaiian Advancement (CNHA) is a member-based 501(c)3 non-profit organization with a mission to enhance the cultural, economic, political, and community development of Native Hawaiians. Headquartered in Kapolei, CNHA is a Native Community Development Financial Institution (CDFI) certified by the U.S. Treasury department and a HUD-Certified Housing Counseling agency. CNHA provides access to capital, financial education and individualized financial counseling services with a focus on low and moderate-income families. CNHA serves as a National Intermediary, providing grants and loans targeting underserved communities in Hawai'i. For more information, visit www.hawaiiancouncil.org.



Testimony Before The
House Committee on Judiciary and Hawaiian Affairs
IN SUPPORT OF SB 739
March 14, 2023, 2:00PM, Room 325

My name is Kevin Chang and I am the Executive Director of [Kua'āina Ulu 'Auamo \(or KUA\)](#). KUA works to empower grassroots rural and Native Hawaiian mālama 'āina groups -fishers, farmers, families- to celebrate their places and pass on their traditions to better Hawai'i and achieve 'āina momona— an abundant, productive ecological system that supports community well-being.

KUA employs a community-driven approach that currently supports a statewide network of 36 mālama 'āina community groups collectively referred to as E Alu Pū (moving forward together), 40 fishpond projects and practitioners called the Hui Mālama Loko I'a, and a growing group of over 60 Limu practitioners and supporters called the Limu Hui. Our vision of 'āina momona includes pathways to new economic and environmental regenerative opportunities for present and future generations.

KUA supports SB 739 as an incremental step on a pathway towards 'āina momona. This bill lowers the requisite *mens rea*, or state of mind required to commit the criminal offense of desecration of places worshipped, venerated and celebrated by our community. If passed the crime of desecration would be lowered from “intentionally desecrates” to “knowingly desecrates.” As more tourists inundate our state and explore places once seen as off the map the more they will come in contact with wahi pana. A change in definition will help communities and our state and county better account for and prosecute perpetrators of this crime.

A primary function of KUA includes development of an 'auwai, a stream of resources, tools, bridges, relationships, and networks that help to cultivate and take our communities' work to greater levels of collective impact. A core catalyst for the flow in this 'auwai includes our state policies. There have been calls for better law for a long time especially by kia'i who care for these wahi pana with or without the support of our state. In many cases it is communities like those in our networks who do the stewardship and have long called for greater protection against the desecration of wahi pana. As an example, Ahu o Laka and the traditional lo'i at Hā'ena, Kaua'i where community members directly enhance and protect those sites now in collaboration with the government.

The communities we work with are committed to ensuring the long-term health of our biocultural resources. They have depended on them for generations. We believe our environment, the foundation of our very existence, is about long-term investment and a vision of 'āina momona. To get there it requires among other things taking the steps to better care for our rich heritage as more of our home is accessed by those who might wish it harm.

Please pass this bill. Mahalo for this opportunity to testify. Aloha 'Āina Momona.

SB-739

Submitted on: 3/13/2023 12:54:51 PM

Testimony for JHA on 3/14/2023 2:00:00 PM

Submitted By	Organization	Testifier Position	Testify
Dana Keawe	Individual	Support	Written Testimony Only

Comments:

Support

SB-739

Submitted on: 3/13/2023 6:03:03 PM

Testimony for JHA on 3/14/2023 2:00:00 PM

Submitted By	Organization	Testifier Position	Testify
Gene Ross K. Davis	Individual	Support	Written Testimony Only

Comments:

Aloha

I support SB739

SB-739

Submitted on: 3/13/2023 6:13:52 PM

Testimony for JHA on 3/14/2023 2:00:00 PM

Submitted By	Organization	Testifier Position	Testify
Rosie F Davis	Individual	Support	Written Testimony Only

Comments:

I support SB739

Mahalo nui Rosie

SB-739

Submitted on: 3/14/2023 9:40:36 AM

Testimony for JHA on 3/14/2023 2:00:00 PM

Submitted By	Organization	Testifier Position	Testify
Faith Tuipulotu	Individual	Support	Written Testimony Only

Comments:

Hi,

I am in support of SB 739.

Thank you, Faith Tuipulotu