

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

ON THE FOLLOWING MEASURE:

S.B. NO. 777, S.D. 1, RELATING TO THE CRIMINAL DESTRUCTION OF TREES.

BEFORE THE: SENATE COMMITTEE ON JUDICIARY

DATE: Tuesday, January 25, 2022 **TIME:** 9:30 a.m.

LOCATION: State Capitol, Via Videoconference

TESTIFIER(S): Holly T. Shikada, Attorney General, or
Kory W. Young, Deputy Attorney General

Chair Rhoads and Members of the Committee:

The Department of the Attorney General (Department) offers the following comments.

The purpose of the bill is to make the destruction or damaging of a tree on state or county property punishable as a misdemeanor by adding a new section to chapter 708, Hawaii Revised Statutes.

As written, the intentional or knowing state of mind would only pertain to subsection (1)(a), and subsection (1)(b) would not have a designated state of mind. Subsection (1) should be rewritten to move the intentional or knowing state of mind required to commit the offense from the beginning of paragraph (a) on page 1, line 8, to before the beginning of paragraphs (a) and (b) on page 1, line 7, as follows:

(1) A person commits the offense of criminal destruction of a tree on state or county property if, by means other than fire, the person intentionally or knowingly:

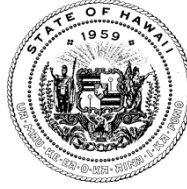
- (a) Fells, injures, or destroys a tree growing or standing upon state or county property to the point of it having no value; or
- (b) Substantially damages the potential value of a tree growing or standing upon state or county property without the consent of the state or county on which the tree stands.

The penalty established in subsection (3) would require the State or a county to retain an arborist for every conviction, even in cases where the value of the tree is not disputed. We recommend adding "or by the agreement of the parties" to the end of subsection (3) on page 2, line 4, to read: ". . . as determined by an arborist or by the

agreement of the parties." This would allow an arborist to be called in cases where the value of the tree is being contested, but would allow the parties to agree to an amount in cases where the value is either undisputed or could otherwise be agreed upon.

Thank you for the opportunity to provide comments on the bill.

DAVID Y. IGE
GOVERNOR



LATE

TESTIMONY BY:

JADE T. BUTAY
DIRECTOR

Deputy Directors
ROSS M. HIGASHI
EDUARDO P. MANGLALLAN
PATRICK H. MCCAIN
EDWIN H. SNIFFEN

STATE OF HAWAII
DEPARTMENT OF TRANSPORTATION
869 PUNCHBOWL STREET
HONOLULU, HAWAII 96813-5097

January 25, 2022
9:30 a.m.
State Capitol, Teleconference

S.B. 777, S.D. 1
RELATING TO RELATING TO THE CRIMINAL DESTRUCTION OF TREES

Senate Committee on Judiciary

The Department of Transportation **supports** this bill that will make it a criminal misdemeanor offence for an individual to damage or destroy a tree on state or county property. However, in order for the State and Counties to conduct maintenance activities, the State and Counties should be exempt from all provisions of this measure.

Thank you for the opportunity to provide testimony.



Written Testimony before the

SENATE COMMITTEE ON JUDICIARY
Tuesday, January 25, 2022 (9:30 am)

RE: SB777 SD1 RELATING TO THE CRIMINAL DESTRUCTION OF TREES

Chair Rhodes, Vice Chair Keohokalole, Members of the Committee on Judiciary:

Trees for Honolulu's Future (TFHF) is a non-profit organization with a vision for a tree-filled island that preserves and enhances our quality of life, especially in the face of climate change.

We support the above-referenced bill, which establishes a criminal statute for the criminal destruction of a tree on state or county property punishable as a misdemeanor. At the risk of sounding trite, "who speaks for the trees"? They do not have a voice, they deserve protection. We thank Senator Lee for introducing this measure. Full disclosure, Senator Lee is a member of our voluntary Panel of Advisers.

While for the City & County of Honolulu there is an ordinance addressing destruction of street trees, we are not certain about other counties. Regardless, having this additional statute to charge under is another tool. One challenge we've heard anecdotally is needing of a police officer to witness the actual act. While we do not know if that will be the case with SB777, we urge the Legislature to consider means to make it easier, similar to what we understand was done with regard to setting off fireworks illegally, for law enforcement to bring charges for destruction of trees on state or county property.

We propose that subsection (3) page 2, line 4 of SD1, be amended to include the word "certified" in front of the word "arborist". This is clarify that the arborist has professional credentials, in this case, from the International Society of Arboriculture, which is the only organization we are aware of that issues such certifications, which require passage of an exam plus continuing education.

This is a good chance to reiterate the multiple benefits of trees well documented by research. Trees create shade and use evapotranspiration to lower temperature. Trees also recharge groundwater and decrease surface runoff protecting our reefs. Trees trap pollutants and store CO2. Trees calm traffic and so much more. They are indeed, valuable infrastructure.

We ask that this bill be passed. Thank you for the opportunity to testify.

Mahalo,

Daniel Dinell, President

HONOLULU is HOT TREES are COOL

Visit us: www.TreesForHonolulu.org Contact us: info@TreesForHonolulu.org Voice/Fax/Text: 808-707-6353
P.O. Box 12051, Honolulu, Hawaii 96828

DEPARTMENT OF THE PROSECUTING ATTORNEY
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THOMAS J. BRADY
FIRST DEPUTY
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LATE

THE HONORABLE KARL RHOADS, CHAIR
SENATE COMMITTEE ON JUDICIARY
Thirty-first State Legislature
Regular Session of 2022
State of Hawai'i

January 25, 2022

RE: S.B. 777; RELATING TO THE CRIMINAL DESTRUCTION OF TREES.

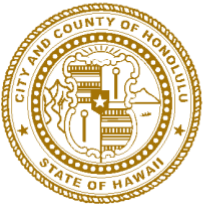
Chair Rhoads, Vice-Chair Keohokalole and members of the Senate Committee on Judiciary, the Department of the Prosecuting Attorney of the City and County of Honolulu ("Department") submits the following comments regarding S.B. 777.

While the Department understands and takes no position on the general concept of the bill, it is uncertain how certain elements of the proposed offenses would be established, or if they are worded in such a way that “ordinary people can understand what conduct is prohibited and in a manner that does not encourage arbitrary and discriminatory enforcement,” as required by caselaw.¹ In particular, the phrases: “to the point of having no value” (page 1, line 10) and “potential value of a tree” (page 1, line 11), are somewhat vague or ambiguous, and may be subject to challenge. For example, defendants could argue that trees can be chopped down and still have value as timber, firewood, or other uses.

In terms of proving these elements for trial, or determining the “replacement value of the tree” (page 2, line 4) for sentencing purposes, the current language of the bill would likely require the use of an expert witness, in order to establish the monetary value and/or devaluation of a particular tree. The Department is currently researching the feasibility of subpoenaing a State-employed arborist as an expert witness, if this bill were to pass, but expert witnesses are rarely used in misdemeanor-level trials.

Thank you for the opportunity to submit testimony on this matter.

¹ State v. Beltran, 116 Haw. 146, 151, 172 P.3d 458 (2007) (internal citations omitted).



RADIANT CORDERO
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LATE

January 24, 2022

TO: CHAIR KARL RHOADS, SENATE COMMITTEE ON JUDICIARY
VICE CHAIR JARRETT KEOHOKALOLE, SENATE COMMITTEE ON
JUDICIARY
MEMBERS OF THE SENATE COMMITTEE ON JUDICIARY

FROM: COUNCILMEMBER RADIANT CORDERO
HONOLULU CITY COUNCIL, DISTRICT VII

SUBJECT: TESTIMONY IN SUPPORT OF SENATE BILL 777, SD1

Aloha Chair Rhoads, Vice Chair Keohokalole and Members of the Senate Committee on
Judiciary:

I respectfully transmit this testimony in **support** of Senate Bill 777, SD1 and wish to offer
additional comments.

My Honolulu City Council district, which spans from Ford Island & Hālawā to Liliha & Iwilei,
has some of the hottest temperatures on record as well as the least tree canopy coverage,
indicated by the City and County of Honolulu's community heat map. This analysis of heat and
humidity data was collected throughout O'ahu by the City and County of Honolulu's Office of
Climate Change, Sustainability & Resiliency and community partners. The growth,
maintenance, and protection of trees is important to the health, appeal, and general welfare of our
communities.

While passage of this bill would be another deterrent to unnecessarily damage to trees, agencies
at the state and county levels must focus on preventative measure as well, as to not further local
enforcement agencies who are already experiencing more responsibilities resulting from the
COVID-19 pandemic. Preventive measures that may assist in curbing destruction of trees
include: incorporating natural boundaries of shrubbery around trees, setting schedules in
accordance with a tree database, setting up tree care and monitoring as parts of adopt-a-
block/adopt-a-park programs.

Senate Bill 777, SD1 is one component, but further support for local law enforcement and
preventative actions are necessary.

Thank you for this opportunity to testify in **support** of Senate Bill 777, SD1.