



**WRITTEN TESTIMONY OF
THE DEPARTMENT OF THE ATTORNEY GENERAL
TWENTY-NINTH LEGISLATURE, 2018**

ON THE FOLLOWING MEASURE:

S.B. NO. 2863, S.D. 1, RELATING TO THE PENAL CODE.

BEFORE THE:

SENATE COMMITTEE ON JUDICIARY

DATE: Tuesday, February 27, 2018 **TIME:** 9:30 a.m.

LOCATION: State Capitol, Room 016

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

Chair Taniguchi and Members of the Committee:

The Department of the Attorney General ("the Department") appreciates the intent of this bill and submits comments.

The purpose of this bill is to amend the crimes of criminal property damage in the first, second, and third degrees to include damage to property holding cultural or historical significance to Native Hawaiians based upon the dollar value of the damaged property.

The bill, on page 2, lines 14-18, adds a new definition to section 708-800, Hawaii Revised Statutes, that reads as follows:

"Property holding cultural or historical significance to Native Hawaiians" means property that perpetuates Hawaiian traditional knowledge, strengthens cultural or spiritual connections among Native Hawaiians, or has demonstrable benefits to the Native Hawaiian community.

The definition is both broad and vague. It could include many different types of property, including an object, a building or structure, or land area. Unless it is property that has been specifically identified and marked as having cultural or historical significance to Native Hawaiians, it may be difficult to determine what property would have that significance. Persons may not have sufficient notice that they are violating this law.

The bill, on page 4, lines 3-5, sets out the proposed amendment to the offense of criminal property damage in the first degree as follows:

The person intentionally or knowingly damages property holding cultural or historical significance to Native Hawaiians in an amount exceeding \$1,500.

Unlike other criminal property damage provisions, this offense does not include the requirement that the person damage the property of another, without the other's consent. Ownership and consent are not relevant to the commission of the offense. This means that the owner of the property can damage his own property and be charged with the felony offense if the property has cultural or historical significance to Native Hawaiians. There may also be an issue about what constitutes "damage" to such "significant" property. The "damage" could possibly include efforts to renovate, repair, or upgrade the property.

The amendments to the other criminal property damage offenses include similar provisions and issues.

The Department appreciates the opportunity to provide comments.

SB-2863-SD-1

Submitted on: 2/24/2018 10:56:44 AM

Testimony for JDC on 2/27/2018 9:30:00 AM

Submitted By	Organization	Testifier Position	Present at Hearing
De MONT R. D. CONNER	Testifying for Ho'omanapono Political Action Committee (HPAC)	Support	Yes

Comments:

We continue to STRONGLY SUPPORT this bill. To date NO ONE was held accountable for the bulldozing of the AHU that was erected by Aloha `Aina Kia`i on Mauna Awakea. In fact, under questioning, the State Representative, during the hearing on SB3090, had first denied that the AHU was bulldozed, until Sen. Kahele pointed to an internal memo that acknowledged the bulldozing of the AHU. If Hawaiian cultural & heritage sites & places are not respected & protected then we truly live in a place where ALOHA & MALAMA is DEAD! Mahalo.

SB-2863-SD-1

Submitted on: 2/26/2018 7:37:08 AM

Testimony for JDC on 2/27/2018 9:30:00 AM

Submitted By	Organization	Testifier Position	Present at Hearing
Rachel L. Kailianu	Testifying for Ho`omana Pono, LLC	Support	Yes

Comments:

I am in STRONG SUPPORT of this bill because it does not exclude the government, contractors, sub contractors, from desecrating our (Kanaka Maoli), Cultural & Historical sites. Mahalo.

SB-2863-SD-1

Submitted on: 2/25/2018 12:44:48 AM

Testimony for JDC on 2/27/2018 9:30:00 AM

Submitted By	Organization	Testifier Position	Present at Hearing
Melodie Aduja	Testifying for OCC Legislative Priorities Committee, Democratic Party of Hawai'i	Support	No

Comments:

**PRESENTATION OF THE
OAHU COUNTY COMMITTEE ON LEGISLATIVE PRIORITIES
DEMOCRATIC PARTY OF HAWAII'
TO THE COMMITTEE ON JUDICIARY
THE SENATE
TWENTY-NINTH LEGISLATURE
REGULAR SESSION OF 2018
Tuesday, February 27, 2018
9:30 a.m.**

Hawaii State Capitol, Conference Room 016

RE: Testimony in Support of Senate Bill **2863 SD1** RELATING TO THE PENAL CODE

To the Honorable Brian T. Taniguchi, Chair; the Honorable Karl Rhoads, Vice-Chair, and Members of the Committee on Judiciary:

Good morning. My name is Melodie Aduja. I serve as Chair of the Oahu County ("OCC") Legislative Priorities Committee of the Democratic Party of Hawaii. Thank you for the opportunity to provide written testimony on Senate Bill No. **2863 SD1** relating to the Penal Code; Criminal Property Damage; and Property Holding Cultural or Historical Significance to Native Hawaiians.

The OCC Legislative Priorities Committee is in favor of Senate Bill No .**2863 SD1** and supports its passage.

Senate Bill No.**2863 SD1** is in accord with the Platform of the Democratic Party of Hawai'i ("DPH"), 2016, as it amends the offenses of criminal property damage in the first, second, and third degrees to include damage to property holding cultural or historical significance to Native Hawaiians according to the state of mind of the offender and dollar value of the damaged property.

Specifically, the DPH Platform provides that "[w]e support the growth of Native Hawaiian farming, agricultural and healing practices. We value and wish to foster the preservation of our host culture. " (Platform of the DPH, P. 4, Lines 213-214 (2016)).

Given that Senate Bill No.**2863 SD1** amends the offenses of criminal property damage in the first, second, and third degrees to include damage to property holding cultural or historical significance to Native Hawaiians according to the state of mind of the offender and dollar value of the damaged property, it is the position of the OCC Legislative Priorities Committee to support this measure.

Thank you very much for your kind consideration.

Sincerely yours,

/s/ Melodie Aduja

Melodie Aduja, Chair, OCC Legislative Priorities Committee

Email: legislativepriorities@gmail.com, Text/Tel.: (808) 258-8889

SB-2863-SD-1

Submitted on: 2/23/2018 8:48:38 PM

Testimony for JDC on 2/27/2018 9:30:00 AM

Submitted By	Organization	Testifier Position	Present at Hearing
Kat Culina	Individual	Support	No

Comments:



Office of the Public Defender State of Hawaii



Testimony of the Office of the Public Defender, State of Hawaii to the Senate Committee on Judiciary

February 27, 2018, 9:30 a.m.

S.B. No. 2863, SD1: RELATING TO THE PENAL CODE

Chair Taniguchi and Members of the Committee:

This measure would create a new category for the damage to property deemed to hold cultural or historical significance to Native Hawaiians. The Office of the Public Defender opposes S.B. 2863, SD1.

The definition what constitutes cultural or historical significance to Native Hawaiians is vague and ambiguous and could be subject to abuse by prosecutors. While there is widespread agreement that 'Iolani Palace or Hōkūle'a have cultural and/or historical significance to Native Hawaiians, there are many other examples of questionable cultural or historical significance. How would the courts determine historical or cultural significance? The vandalism of the canoes in Hawaii Kai was reprehensible and costly. Native Hawaiians discovered the islands by way of canoe. But do these specific canoes hold a cultural or historical significance to Native Hawaiians?

We do not believe this measure, as written will hold up to appellate review. Therefore, the Office of the Public Defender cannot support S.B. 2863, SD1.

Thank you for the opportunity to be heard on this matter.