



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

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**ON THE FOLLOWING MEASURE:**

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

**BEFORE THE:**

SENATE COMMITTEE ON HAWAIIAN AFFAIRS

**DATE:** Tuesday, February 13, 2018      **TIME:** 1:30 p.m.

**LOCATION:** State Capitol, Room 016

**TESTIFIER(S):** Russell A. Suzuki, Acting Attorney General, or  
Lance Goto, Deputy Attorney General.

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Chair Shimabukuro 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 14-15, adds a new definition to section 708-800, Hawaii Revised Statutes (HRS), that reads as follows:

"Property holding cultural or historical significance to Native Hawaiians" means any building, structure, monument, statue, object, district, area, or site, which is of cultural or historical significance to Native Hawaiians.

The definition is both broad and vague. It includes many different types of property, including an object, a building or structure, or land area. And it includes property that has "cultural or historical significance to Native Hawaiians." 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 1-3, 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.

# HISTORIC HAWAII FOUNDATION

**TO:** Kenekoa/Senator Maile S.L. Shimabukuro, Luna Ho‘omaluku/Chair  
Kenekoa/Senator Brickwood Galuteria, Hope Luna Ho‘omaluku/Vice Chair  
Ke Kōmike no ke Kuleana Hawai‘i / Committee on Hawaiian Affairs

**FROM:** Kiersten Faulkner, Executive Director  
Historic Hawai‘i Foundation

**Committee:** Tuesday, February 13, 2018  
1:30 p.m.  
Conference Room 016

**RE: SB 2863, Relating to the Penal Code**

On behalf of Historic Hawai‘i Foundation, I am writing **in support for SB 2863**. The bill amends the penal code related to criminal property damage to include damage to property holding cultural or historical significance to Native Hawaiians.

The bill would provide additional mechanisms to address intentional or knowingly damaging or destroying property that is culturally or historically significant to Native Hawaiians when the damage exceeds threshold amounts.

The bill cites recent examples of willful and malicious vandalism or destruction of significant historical buildings, such as ‘Iolani Palace, and objects, such as the statue of Prince Kūhiō in Waikīkī. Another recent example was the dismemberment of the statue of King Kamehameha in Hilo.

Although the State’s historic preservation statute (HRS §6E-11) contains penalties for the destruction of historic property on private lands, that provision does not address public property (such as state parks and public art), and has suffered from a lack of enforcement capacity. We would also encourage the Legislature to broaden the applicability of HRS §6E-11 to include damage to publically-owned historic property, and to increase the capacity of the Department of Land and Natural Resources to aggressively enforce the section.

In addition, HHF supports SB 2863 to specifically call for penalties for destruction or damage to historic and cultural properties that are significant to Native Hawaiians.

We recommend that the definition of “Property holding cultural or historical significance to Native Hawaiians” be tightened. It is unclear if the level of significance is based on importance to all Native Hawaiians, or to some, or to an individual. This could introduce concerns for consistent enforcement.

Since 1974, Historic Hawai‘i Foundation (HHF) has been a statewide leader for historic preservation. HHF works to preserve Hawai‘i’s unique architectural and cultural heritage and believes that historic preservation is an important element in the present and future quality of life, economic viability and environmental sustainability of the state.

**Therefore, Historic Hawai‘i Foundation supports HB 1213.**

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Historic Hawai‘i Foundation was established in 1974 to encourage the preservation of historic buildings, sites and communities on all the islands of Hawai‘i. As the statewide leader for historic preservation, HHF works to preserve Hawai‘i’s unique architectural and cultural heritage and believes that historic preservation is an important element in the present and future quality of life, environmental sustainability and economic viability of the state.

**SB-2863**

Submitted on: 2/7/2018 10:17:57 PM

Testimony for HWN on 2/13/2018 1:30:00 PM

<b>Submitted By</b>	<b>Organization</b>	<b>Testifier Position</b>	<b>Present at Hearing</b>
Rachel L. Kailianu	Testifying on behalf of Ho`omana Pono, LLC	Support	Yes

Comments:

**SB-2863**

Submitted on: 2/7/2018 5:13:56 PM

Testimony for HWN on 2/13/2018 1:30:00 PM

<b>Submitted By</b>	<b>Organization</b>	<b>Testifier Position</b>	<b>Present at Hearing</b>
De MONT R. D. CONNER	Testifying on behalf of Ho'omanapono Political Action Committee (HPAC)	Support	Yes

Comments:

**SB-2863**

Submitted on: 2/12/2018 1:10:22 PM

Testimony for HWN on 2/13/2018 1:30:00 PM

<b>Submitted By</b>	<b>Organization</b>	<b>Testifier Position</b>	<b>Present at Hearing</b>
Melodie Aduja	Testifying on behalf of OCC Legislative Priorities Committee	Support	No

Comments:

**SB-2863**

Submitted on: 2/5/2018 3:42:46 PM

Testimony for HWN on 2/13/2018 1:30:00 PM

<b>Submitted By</b>	<b>Organization</b>	<b>Testifier Position</b>	<b>Present at Hearing</b>
Terez Amato Lindsey		Support	No

Comments:

**SB-2863**

Submitted on: 2/5/2018 4:02:53 PM

Testimony for HWN on 2/13/2018 1:30:00 PM

<b>Submitted By</b>	<b>Organization</b>	<b>Testifier Position</b>	<b>Present at Hearing</b>
Debra Koonohiokala Norenberg		Support	No

Comments:



**SB-2863**

Submitted on: 2/5/2018 4:59:53 PM

Testimony for HWN on 2/13/2018 1:30:00 PM

<b>Submitted By</b>	<b>Organization</b>	<b>Testifier Position</b>	<b>Present at Hearing</b>
keomailani von gogh		Support	No

Comments:

**SB-2863**

Submitted on: 2/5/2018 8:18:40 PM

Testimony for HWN on 2/13/2018 1:30:00 PM

<b>Submitted By</b>	<b>Organization</b>	<b>Testifier Position</b>	<b>Present at Hearing</b>
Kat Culina		Support	No

Comments:

**SB-2863**

Submitted on: 2/7/2018 2:42:31 PM

Testimony for HWN on 2/13/2018 1:30:00 PM

<b>Submitted By</b>	<b>Organization</b>	<b>Testifier Position</b>	<b>Present at Hearing</b>
Kama Hopkins		Support	No

Comments:

**SB-2863**

Submitted on: 2/11/2018 4:44:47 PM

Testimony for HWN on 2/13/2018 1:30:00 PM

<b>Submitted By</b>	<b>Organization</b>	<b>Testifier Position</b>	<b>Present at Hearing</b>
Makanaokeakua Gerona	Individual	Support	No

Comments:

Kā• ko'o wau i ka mana'o i hā• pai 'ia e SB2863.

I support bill SB2863.

**From:** [Kau'inohea O Nalani Peneku](#)  
**To:** [EEPtestimony](#); [HWNTestimony](#)  
**Subject:** SB2863  
**Date:** Wednesday, February 7, 2018 11:56:25 AM

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Aloha. 'O Kau'inohea Peneku ko'u inoa. I am a mother of two young daughters and we are of native Hawaiian descent. It is our 'ohana's goal along with many other 'ohana throughout our Hawaiian Islands to see our native language, culture, practices, and people thrive. The only way that this will be at all possible is if we make it a priority to ensure that the programs, organizations, leaders, etc. which teach, support, and perpetuate our language have what they need in order to do so. However in order for our people to thrive we must first protect the lands, establishments, etc. which hold significance to our native people and culture. My 'ohana and I support Bill SB2863. E ola ka 'olelo Hawai'i!

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Unity, Equality, Aloha for all



To: SENATE COMMITTEE ON HAWAIIAN AFFAIRS  
For hearing Tuesday, February 13, 2018

Re: SB 2863 RELATING TO THE PENAL CODE.

Amends 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 according to the dollar value of the damaged property.

#### TESTIMONY IN OPPOSITION

This bill, if enacted, would put the legislature on record as saying that the collective cultural heritage of Hawaii should be allocated among ethnic groups separately, and that the portion allocated to ethnic Hawaiians is of greater value; and therefore penalties imposed by law for destroying or vandalizing elements attributed to ethnic Hawaiians should be made greater than penalties imposed for destroying or vandalizing elements attributed to other groups.

In ancient Hawaii society was highly stratified into numerous levels of ali'i based on genealogy, with ordinary maka'ainana occupying an unbridgable gap below them (not to mention the outcast kauwa). Ali'i

of the highest rank had the kapumoe, requiring people of lower ranks to lie face down when the ali'i passed by; and anyone who stepped on his shadow or touched an item of his clothing would be put to death. This bill now before the legislature would establish Native Hawaiians as today's ali'i, such that destruction or vandalism of property they hold sacred will result in punishment more severe than destruction or vandalism of property ascribed to lower-ranking racial groups (Asians or haoles).

Isn't it the essence of racism to say that one race is superior to, or has higher value than, other races?

Isn't it racist to select any particular multicultural artifact of Hawaii's heritage and arbitrarily assign it to only one of the ethnic groups who jointly made it a core part of what makes Hawaii a special place?

Ethnic Hawaiians lay claim to the voyaging canoe Hokule'a as a distinctively Hawaiian cultural artifact. But it is made of plastic and other materials from outside Hawaii; its first navigator was Mau Piailug, a Micronesian; the man who conceived the project and was the founding president of the Polynesian Voyaging Society was Ben Finney, a Caucasian anthropologist from California; tens of millions of taxpayer dollars from the United States government came over a period of many years to build and repair the canoe and to pay for transportation and organizational expenses. Hokule'a is "Hawaiian" only if we allow that word to be used as the name of a place, not the name of a race.

Let's consider an item which this bill, in Section 1, identifies as Native Hawaiian. Iolani Palace was built with tax dollars generated primarily from sugar plantations owned by Caucasians who came from America and Europe, using laborers from Asia and Europe; money that was allocated by the multiracial government of the Kingdom of Hawaii; and built with materials from throughout the world including the three historic doors that were vandalized -- and the vandals were themselves ethnic Hawaiians! Iolani Palace has been owned by the government of Hawaii as part of the core culture of all the people of Hawaii for more than 135 years from the time it was built until now. It was the capitol

of the Republic of Hawaii and the Territory of Hawaii for 75 years (1893 to 1968), where the legislature met and the President or Governor had his office. The Palace is treated as a Native Hawaiian cultural artifact only because the group which operates it has turned it into a museum devoted to the 11 years when it was under the rule of Kalakaua and Lili'uokalani; and oil portraits of the monarchs line the main floor hallway (but not Sanford Dole, the only President of the independent nation of Hawaii that continued for five and a half more years after the revolution). Iolani Palace is "Hawaiian" only if we allow that word to be used as the name of a place, not the name of a race.

If this committee wants to increase the penalties for theft, destruction, or vandalism of property, that's a good idea. Please do so. But leave race out of it -- neither the race of the perpetrator nor the race of the owner should be a factor, unless a racial hate-crime is involved. But please be advised that most of the racial hate crimes in Hawaii are committed by ethnic Hawaiians against haoles in general, or members of the military. Who says so? The famous Southern Poverty Law Center exposes racial hate crimes and hate groups, focusing mainly on hate directed against blacks and homosexuals and committed by Caucasian Ku Klux Klan or neo-Nazi skinheads. But in Fall 2009 two important articles about Hawaii appeared in the Fall 2009 issue of the SPLC quarterly magazine "Intelligence Report." See this webpage which provides full text of two articles in that magazine along with analysis of them: "Anti-Caucasian Racial Hate Crimes in Hawaii -- Southern Poverty Law Center brings the issue to national awareness in a flawed but valuable Intelligence Report article."

<http://www.angelfire.com/big09a/RacialHateCrimesHawSPLC.html>

See also

"Racism in the Hawaiian Sovereignty Movement (with special focus on anti-white racism)" at

<http://www.angelfire.com/hi5/bigfiles3/racismhawsov.html>

Has this testimony been nasty and racially divisive? No more so than the piece of legislation it opposes!