July 10, 2017

The Honorable Ronald D. Kouchi, President
and Members of the Senate
Twenty-Ninth State Legislature
State Capitol, Room 409
Honolulu, Hawai‘i 96813

Dear President Kouchi, Speaker Saiki, and Members of the Legislature:

This is to inform you that on July 10, 2017, the following bill was signed into law:

SB 895 SD1 HD2 CD1 RELATING TO CRIMINAL TRESPASS
ACT 136 (17)

Sincerely,

DAVID Y. IGE
Governor, State of Hawai‘i
A BILL FOR AN ACT

RELATING TO CRIMINAL TRESPASS.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF HAWAII:

SECTION 1. The legislature finds that it is necessary to
establish a new criminal trespass offense to protect against
people remaining on improved state land when it is closed or
otherwise restricted, or on or under state highways.

The legislature further finds that the offense of criminal
trespass in the second degree should be amended to include
government agricultural lands that are not fenced, enclosed, or
secured in a manner designed to exclude intruders when there is
appropriate signage giving notice that the property is
government property and trespassing is prohibited.

This Act is not intended to abridge the constitutional
rights of persons who are homeless. These include their rights
under the Eighth Amendment of the United States Constitution and
their corresponding rights under article I, section 12, of the
Constitution of the State of Hawaii to be free from cruel and
unusual punishment.
SECTION 2. Chapter 708, Hawaii Revised Statutes, is amended by adding to part II a new section to be appropriately designated and to read as follows:

"§708- Criminal trespass onto state lands. (1) Except for lands owned by the office of Hawaiian affairs, and except for improved state lands that are designated safe havens by state departments or agencies, or that are under executive order by the governor to be used as a safe haven and have a department of health component and adequate space, not to include state hospitals, a person commits the offense of criminal trespass onto state lands if:

(a) The person enters or remains unlawfully in or upon any improved state land when:

(i) The land is closed to public use and its closure hours are posted on a sign or signs on the improved state land, and after a request to leave is made by any law enforcement officer the person remains in or upon the land; or

(ii) The land is not open to the public and there are signs that are sufficient to give reasonable notice that read: "Government Property - No
Trespassing"; provided that these signs shall contain letters no less than two inches in height and shall be placed at reasonable intervals no less than three signs to a mile along the boundary line of the land and at all roads and trails entering the land in a manner and position as to be clearly noticeable from outside the boundary; or

(b) The person enters or remains unlawfully in or upon any state land on or under any highway, and the state land has a sign or signs displayed upon the land that are sufficient to give reasonable notice that read: "Government Property - No Trespassing"; provided that the signs shall contain letters no less than two inches in height and shall be placed at reasonable intervals no less than three signs to a mile along the boundary line of the land and at all roads and trails entering the land in a manner and position as to be clearly noticeable from outside the boundary.

(2) Criminal trespass onto state lands is a petty misdemeanor.
(3) For the purposes of this section, unless the context requires otherwise:

"Highway" has the same meaning as in section 286-2.

"Improved state land" means any state land, including but not limited to harbors under the care and control of the department of transportation under chapter 266, and small boat harbors under the care and control of the department of land and natural resources under chapter 200, upon which there is improvement, including any structure, building, or facility; or alteration of the land by grading, dredging, or mining that would cause a permanent change in the land or that would change the basic natural condition of the land. Land is not "improved state land" if it only has minor improvements, including utility poles, signage, and irrigation facilities or systems; or minor alterations undertaken for the preservation or prudent management of the unimproved or unused land, including fences, trails, or pathways. Land is not "improved state land" solely due to the performance of state maintenance activities on the land, including forest plantings and the removal of weeds, brush, rocks, boulders, or trees; or removal or securing of
rocks or boulders undertaken to reduce risk to downslope properties.

"State lands" means all land owned by the State through any of its departments or agencies.

(4) No conviction under this section shall be used to establish a felony conviction under section 708-803."

SECTION 3. Section 708-814, Hawaii Revised Statutes, is amended by amending subsection (1) to read as follows:

"(1) A person commits the offense of criminal trespass in the second degree if:

(a) The person knowingly enters or remains unlawfully in or upon premises that are enclosed in a manner designed to exclude intruders or are fenced;

(b) The person enters or remains unlawfully in or upon commercial premises after a reasonable warning or request to leave by the owner or lessee of the commercial premises, the owner's or lessee's authorized agent, or a police officer; provided that this paragraph shall not apply to any conduct or activity subject to regulation by the National Labor Relations Act.
For the purposes of this paragraph, "reasonable warning or request" means a warning or request communicated in writing at any time within a one-year period inclusive of the date the incident occurred, which may contain but is not limited to the following information:

(i) A warning statement advising the person that the person's presence is no longer desired on the property for a period of one year from the date of the notice, that a violation of the warning will subject the person to arrest and prosecution for trespassing pursuant to [section 708-814(1)(b), this subsection, and that criminal trespass in the second degree is a petty misdemeanor;

(ii) The legal name, any aliases, and a photograph, if practicable, or a physical description, including but not limited to sex, racial extraction, age, height, weight, hair color, eye color, or any other distinguishing characteristics of the person warned;
(iii) The name of the person giving the warning along with the date and time the warning was given; and

(iv) The signature of the person giving the warning, the signature of a witness or police officer who was present when the warning was given and, if possible, the signature of the violator;

(c) The person enters or remains unlawfully on agricultural lands without the permission of the owner of the land, the owner's agent, or the person in lawful possession of the land, and the agricultural lands:

(i) Are fenced, enclosed, or secured in a manner designed to exclude intruders;

(ii) Have a sign or signs displayed on the unenclosed cultivated or uncultivated agricultural land sufficient to give notice and reading as follows: "Private Property"[-] or "Government Property - No Trespassing". The sign or signs, containing letters [net] no less than two inches in height, shall be placed at reasonable intervals no less than three signs to a mile along the boundary
line of the land and at roads and trails entering
the land in a manner and position as to be
clearly noticeable from outside the boundary
line; or

(iii) At the time of entry, are fallow or have a
visible presence of livestock or a crop:
(A) Under cultivation;
(B) In the process of being harvested; or
(C) That has been harvested;

(d) The person enters or remains unlawfully on unimproved
or unused lands without the permission of the owner of
the land, the owner's agent, or the person in lawful
possession of the land, and the lands:
(i) Are fenced, enclosed, or secured in a manner
designed to exclude the general public; or
(ii) Have a sign or signs displayed on the unenclosed,
unimproved, or unused land sufficient to give
reasonable notice and reads as follows: "Private
Property - No Trespassing", "Government Property
- No Trespassing", or a substantially similar
message; provided that the sign or signs shall
contain letters [мет] no less than two inches in height and shall be placed at reasonable intervals no less than three signs to a mile along the boundary line of the land and at roads and trails entering the land in a manner and position as to be clearly noticeable from outside the boundary line.

For the purposes of this paragraph, "unimproved or unused lands" means any land upon which there is no improvement; construction of any structure, building, or facility; or alteration of the land by grading, dredging, or mining that would cause a permanent change in the land or that would change the basic natural condition of the land. Land remains "unimproved or unused land" under this paragraph notwithstanding minor improvements, including the installation or maintenance of utility poles, signage, and irrigation facilities or systems; minor alterations undertaken for the preservation or prudent management of the unimproved or unused land, including the installation or maintenance of fences, trails, or
pathways; maintenance activities, including forest plantings and the removal of weeds, brush, rocks, boulders, or trees; and the removal or securing of rocks or boulders undertaken to reduce risk to downslope properties; or

(e) The person enters or remains unlawfully in or upon the premises of any public housing project or state low-income housing project, as defined in section 356D-1, 356D-51, or 356D-91, after a reasonable warning or request to leave by housing authorities or a police officer, based upon an alleged violation of law or administrative rule; provided that a warning or request to leave shall not be necessary between 10:00 p.m. and 5:00 a.m. at any public housing project or state low-income housing project that is closed to the public during those hours and has signs, containing letters [net] no less than two inches in height, placed at reasonable intervals no less than three signs to a mile along the boundary of the project property[7] and at all entrances to the property, in a manner and position to be clearly noticeable from...
outside the boundary of the project property and to
give sufficient notice that the public housing project
or state low-income housing project is closed to the
public during those hours."

SECTION 4. The department of the attorney general shall
submit a written report to the legislature regarding the extent
to which this Act has been utilized, including any proposed
legislation, no later than twenty days prior to the convening of
the regular sessions of 2018, 2019, and 2020.

SECTION 5. This Act does not affect rights and duties that
matured, penalties that were incurred, and proceedings that were
begun before its effective date.

SECTION 6. This Act does not affect native Hawaiian
traditional and customary rights as set forth in the state
constitution.

SECTION 7. Statutory material to be repealed is bracketed
and stricken. New statutory material is underscored.

SECTION 8. This Act shall take effect upon its approval.

APPROVED this 10 day of JUL, 2017

GOVERNOR OF THE STATE OF HAWAII
SB No. 895, SD 1, HD 2, CD 1

THE HOUSE OF REPRESENTATIVES OF THE STATE OF HAWAII

Date: May 2, 2017
Honolulu, Hawaii

We hereby certify that the above-referenced Bill on this day passed Final Reading in the House of Representatives of the Twenty-Ninth Legislature of the State of Hawaii, Regular Session of 2017.

Joseph M. Souki
Speaker
House of Representatives

Brian L. Takeshita
Chief Clerk
House of Representatives
S.B. No. 895, S.D. 1, H.D. 2, C.D. 1

THE SENATE OF THE STATE OF HAWAII

Date: May 2, 2017
Honolulu, Hawaii 96813

We hereby certify that the foregoing Bill this day passed Final Reading in the Senate of the Twenty-ninth Legislature of the State of Hawaii, Regular Session of 2017.

[Signature]
President of the Senate

[Signature]
Clerk of the Senate