

DAVID Y. IGE  
GOVERNOR



**Testimony by:**  
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IN REPLY REFER TO:

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

February 23, 2017  
2:00 p.m.  
State Capitol, Room 325

**H.B. 1142**  
**RELATING TO CRIMINAL TRESPASS**

House Committee on Judiciary

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The Department of Transportation (DOT) strongly **supports** this Administration bill to add a new criminal trespass section to Part II of Chapter 708, Hawaii Revised Statutes, to protect against people remaining on improved state department of transportation land when it is closed or otherwise restricted and on or under state highways.

This bill aims to clarify an important statute that will assist the DOT in protecting its lands, property, and facilities under its jurisdiction in providing a safe, efficient, accessible, and sustainable inter-modal transportation system that ensures the mobility of people and goods, and enhances and/or preserves economic prosperity and the quality of life.

Thank you for the opportunity to provide testimony.



**HB1142**  
**RELATING TO CRIMINAL TRESPASS**  
House Committee on Judiciary

February 23, 2017

2:00 p.m.

Room 325

The Office of Hawaiian Affairs **OPPOSES** HB1142. HB1142 would further criminalize the homeless community, many of whom may be OHA beneficiaries, without providing any substantive relief to the homelessness crisis. HB1142 raises additional concerns regarding potential impacts to Native Hawaiians' ability to exercise their constitutionally protected traditional and customary access and gathering rights.

OHA appreciates the bill's sentiment, to remove individuals from improved state Department of Transportation (DOT) land or DOT land on or under any highway; however, OHA believes that this measure would only serve to further criminalize the state's homeless population, who often seek shelter and safety on state lands. While OHA understands the difficulty of balancing the integrity of state property with the mental and physical integrity of members of our most vulnerable population, this measure is unlikely to provide any lasting or meaningful relief to the homelessness issues facing our state, and would at most simply displace homeless individuals from DOT lands to other areas. **In addition to requiring substantial funds for enforcement, this measure may in fact further exacerbate the homelessness crisis, by subjecting homeless individuals to criminal liability, thereby reducing their ability to obtain or maintain gainful employment.** Numerous existing laws already exist with regards to protecting state property and the public welfare, including vandalism and disorderly conduct laws; adding an additional layer of criminal trespass liability appears unnecessary to address these legitimate state concerns.

OHA notes that our beneficiaries may be at particular risk of being or becoming homeless, and therefore may be disproportionately affected and effectively criminalized by this measure. According to the *2015 Homeless Service Utilization Report*,<sup>1</sup> Native Hawaiians account for almost one-third of those utilizing homeless services. In addition to high homeless service utilization, 14.1% of Native Hawaiian households include a 'hidden homeless' member, compared to the only 4.2% of other households.<sup>2</sup> Research shows that Native Hawaiians also have higher levels of housing insecurity, with more than half of Native Hawaiian renters living in homes they struggle to afford, and often in

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<sup>1</sup> UNIVERSITY OF HAWAII, HOMELESS SERVICE UTILIZATION REPORT 5 (2015), available at [http://uhfamily.hawaii.edu/publications/brochures/789af\\_HomelessServiceUtilization2015.pdf](http://uhfamily.hawaii.edu/publications/brochures/789af_HomelessServiceUtilization2015.pdf).

<sup>2</sup> 2016 HAWAII HOUSING PLANNING STUDY 73, available at [https://dbedt.hawaii.gov/hhfdc/files/2016/12/State\\_HHPS2016\\_Report\\_111416-FINAL-122216.pdf](https://dbedt.hawaii.gov/hhfdc/files/2016/12/State_HHPS2016_Report_111416-FINAL-122216.pdf).

overcrowded conditions. Despite the fact that Native Hawaiians participate in the labor force at higher rates than the state average<sup>3</sup> and have larger than average family sizes,<sup>4</sup> Native Hawaiian median family income is also \$9,627 (or 12.2%) lower than the state median family income.<sup>5</sup> Such data suggest that changes in the economic conditions of the state and country may result in a disproportionate number of Native Hawaiians becoming homeless, and targeted for criminal liability under this measure. **OHA emphasizes that the disproportionate impact of the criminal justice system on Native Hawaiians accumulates at every stage,<sup>6</sup> and may be exacerbated by this measure's further criminalization of our homeless population.**

**OHA is further concerned with HB1142's potential to have a chilling effect on Native Hawaiians' constitutionally protected traditional and customary access and gathering rights.** Modern transportation infrastructure in an ever-expanding urban environment has served to sever areas of development from intact, undisturbed natural areas. These wilderness areas are deeply valued for their cultural, spiritual, moral, and aesthetic resources beneficial to Native Hawaiians and the general public. **Native Hawaiians have and currently utilize these areas for their traditional and customary practices, which may require them to enter and traverse "improved" DOT lands.** Simply graded or otherwise "improved" DOT lands may also include resources used in the exercise of Native Hawaiian traditional and customary practices. While practitioners may continue to have rights to access and gather upheld in court, notwithstanding this measure, the prospect of potential arrest itself could significantly discourage Native Hawaiian practitioners from seeking access to such areas of cultural significance, and exercising their constitutional rights.

Therefore, OHA urges the Committee to **HOLD** HB1142. Mahalo for the opportunity to testify on this measure.

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<sup>3</sup> See American Community Survey, 2013, Civilian Labor Force Datapoint, U.S. Census Bureau.

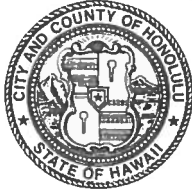
<sup>4</sup> In 2014, the average size of a Native Hawaiian family was 4.06, .45 larger than the state average. See OFFICE OF HAWAIIAN AFFAIRS, NATIVE HAWAIIAN HOMEOWNERSHIP HO'OKAHUA WAIWAI FACT SHEET VOL.2016, NO. 1, page 3, available at <http://www.oha.org/wp-content/uploads/NH-Homeownership-Fact-Sheet-2016.pdf>.

<sup>5</sup> In 2015, the median family income for Native Hawaiians was \$69,560 compared to the state median family income of \$79,187. See OFFICE OF HAWAIIAN AFFAIRS, 2010-2018 STRATEGIC RESULTS: MEDIAN FAMILY INCOME INDICATOR SHEET 2015 available at <http://www.oha.org/wp-content/uploads/Hookahua-Waiwai-Indicator-Sheet.-MFI.-2015.pdf>.

<sup>6</sup> The Disparate Treatment of Native Hawaiians in the Criminal Justice System (2010), see <http://www.oha.org/wp-content/uploads/2015/01/native-hawaiians-criminal-justice-system.pdf>.

POLICE DEPARTMENT  
**CITY AND COUNTY OF HONOLULU**

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KIRK CALDWELL  
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LOUIS M. KEALOHA  
CHIEF

CARY OKIMOTO  
JERRY INOUE  
DEPUTY CHIEFS

OUR REFERENCE **DI-KP**

February 23, 2017

The Honorable Scott Nishimoto, Chair  
and Members  
Committee on Judiciary  
House of Representatives  
State Capitol, Room 421  
415 South Beretania Street  
Honolulu, Hawaii 96813

Dear Chair Nishimoto and Members:

Subject: House Bill No. 1142, Relating to Criminal Trespass

I am Darren Izumo, Major of the Wahiawa Police Station, District 2, Honolulu Police Department (HPD), City and County of Honolulu.

The HPD supports House Bill No. 1142, which adds the offense of criminal trespass onto State Department of Transportation lands to the penal code.

The HPD believes that the passage of this bill will assist in efforts to improve public safety and health by clarifying that persons who ignore posted signage and enter or remain on Department of Transportation lands without permission would be trespassing.

The HPD requests that your committee support the passage of House Bill No. 1142, Relating to Criminal Trespass.

Thank you for the opportunity to testify.

Sincerely,

A handwritten signature in black ink, appearing to be "Darren Izumo", written in a cursive style.

Darren Izumo, Major  
District 2

APPROVED BY:

A handwritten signature in black ink, appearing to be "Cary Okimoto", written in a cursive style.

Cary Okimoto  
Acting Chief of Police

# COMMUNITY ALLIANCE ON PRISONS

P.O. Box 37158, Honolulu, HI 96837-0158

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## COMMITTEE ON JUDICIARY

Rep. Scott Nishimoto, Chair

Rep. Joy San Buenaventura, Vice Chair

Thursday, February 23, 2017

2:00 p.m.

Room 325

## **OPPOSITION TO HB 1142 - CRIMINAL TRESPASS ON STATE DOT LANDS**

Aloha Chair Nishimoto, Vice Chair San Buenaventura and Members of the Committee!

My name is Kat Brady and I am the Coordinator of Community Alliance on Prisons, a community initiative promoting smart justice policies in Hawai'i for two decades. This testimony is respectfully offered on behalf of the approximately 6,000 Hawai'i individuals living behind bars or under the "care and custody" of the Department of Public Safety on any given day. We are always mindful that approximately 1,700 of Hawai'i's imprisoned people are serving their sentences abroad thousands of miles away from their loved ones, their homes and, for the disproportionate number of incarcerated Native Hawaiians, far from their ancestral lands.

HB 1142 adds the offense of criminal trespass onto State Department of Transportation lands to the penal code. Community Alliance on Prisons is in opposition to this bill because it is incongruent with the state's homeless outreach.

The better way of addressing houseless people is contained in SB 716 SD1, that establishes a pre-arrest diversion pilot project for individuals with mental health or substance abuse challenges who allegedly commit nonviolent, non-felony offenses on state property.

It is common knowledge that houseless people congregate under bridges and this bill will open the door for even more houseless individuals to be imprisoned and have to bear the burden of a criminal record. We just participated in the Point in Time count of our houseless people and met so many nice and respectful people who are down on their luck. Please have a heart for the less fortunate.

Community Alliance on Prisons respectfully asks the committee to humanize, not criminalize some of the most vulnerable people in our communities. We, therefore respectfully ask the committee to hold this bill.

Mahalo for the opportunity to testify.

**From:** mailinglist@capitol.hawaii.gov  
**Sent:** Tuesday, February 21, 2017 2:43 PM  
**To:** JUDtestimony  
**Cc:** mendezj@hawaii.edu  
**Subject:** \*Submitted testimony for HB1142 on Feb 23, 2017 14:00PM\*

**HB1142**

Submitted on: 2/21/2017

Testimony for JUD on Feb 23, 2017 14:00PM in Conference Room 325

<b>Submitted By</b>	<b>Organization</b>	<b>Testifier Position</b>	<b>Present at Hearing</b>
Javier Mendez-Alvarez	Individual	Oppose	No

Comments:

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