



TESTIMONY OF THE DEPARTMENT OF THE ATTORNEY GENERAL TWENTY-SEVENTH LEGISLATURE, 2013

ON THE FOLLOWING MEASURE:

H.B. NO. 87, RELATING TO PUBLIC HOUSING.

BEFORE THE:

HOUSE COMMITTEE ON JUDICIARY

DATE: Thursday, February 7, 2013

TIME: 2:02 p.m.

LOCATION: State Capitol, Room 325

TESTIFIER(S): David M. Louie, Attorney General, or
Lance M. Goto, Deputy Attorney General.

Chair Rhoads and Members of the Committee:

The Department of the Attorney General supports the intent of this measure but offers the following comments and recommendations.

The purpose of this bill is to create an offense of criminal trespass in the first degree applicable to public housing projects.

In the interest of making the bill clearer and eliminating any possibility of a successful constitutional challenge, we propose the following amendment on page 2, lines 6-10:

That person enters or remains unlawfully in or upon the premises of any public housing project, as defined in section 356D-1 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:

This amendment will provide specific standards (namely, housing project rules or statutory laws) to guide the issuance of reasonable warnings or requests to leave, thereby rendering frivolous any suggestion that the bill provides unlimited discretion to those issuing requests to leave.

The Department also has concerns about the provision on page 2, at lines 11-13, which creates an exception to the requirement that authorities give a reasonable warning or request to leave. The exception is for the time period between 10:00 p.m. and 5:00 a.m., and means that anyone who is not an "invited guest" would be committing criminal trespass just being on the premises during those hours.

To enforce this time period prohibition, the boundaries of the public housing premises would need to be clearly identifiable to the general public and preferably marked with visible warning signs. There would also need to be a system to identify "invited guests," especially if

their presence on the premises is based on an express "or implied" invitation by a resident. It could be very difficult for responding law enforcement to determine who is or is not an "invited guest." Many people live in the public housing projects. Family and friends visit. Acquaintances of family or friends may accompany them.

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

February 7, 2013

H.B. No. 87: RELATING TO PUBLIC HOUSING

Chair Rhoads and Members of the Committee:

H.B. No. 87 would extend the offense of Trespass 1° to entering or remaining unlawfully on any public housing project after reasonable warning to leave by housing authorities or a police officer. We oppose the bill because it further specifies that a warning or request to leave need not be given between 10:00 p.m. and 5:00 a.m. This would allow the authorities to clear out a housing area after 10:00 p.m. A person may have any number of legitimate reasons for being on the grounds of a housing project during the specified time and should not be arrested or cited without a warning.

The bill also is vague on what would constitute an “implied” invitation of a resident in the section on page 2 regarding the definition of “invited guest.” An implied invitee is exempted from the trespass law. Is someone who accompanies an express invitee but who is not objected to by the resident an “implied” invitee?

Thank you for the opportunity to comment.

NEIL ABERCROMBIE
GOVERNOR



HAKIM OUANSAFI
EXECUTIVE DIRECTOR

STATE OF HAWAII
DEPARTMENT OF HUMAN SERVICES
HAWAII PUBLIC HOUSING AUTHORITY
1002 NORTH SCHOOL STREET
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BARBARA E. ARASHIRO
EXECUTIVE ASSISTANT

Statement of
Hakim Ouansafi
Hawaii Public Housing Authority
Before the

HOUSE COMMITTEE ON JUDICIARY

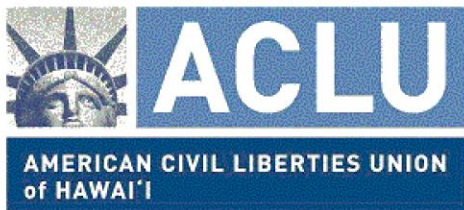
February 7, 2013 2:02 P.M.
Room 325, Hawaii State Capitol

In consideration of
House Bill No. 87
Relating to Public Housing

Honorable Chair and Members of the House Committee on Judiciary, thank you for the opportunity to provide you with comments regarding House Bill No. 87, relating to public housing.

The Hawaii Public Housing Authority (HPHA) strongly supports enactment of this measure which amends criminal trespass in the first degree to include public housing projects. The HPHA continues to make improvements to security measures at many of our high risk housing projects, including additional fences, security fences, and photo IDs for tenants. Enactment of this measure will significantly improve the ability of the HPHA to ensure a secure, livable community for our residents. HPHA will continue to work with local law enforcement and security personnel to refine our policies and procedures to effectively apply the provision, along with other necessary security improvements.

The HPHA appreciates the opportunity to provide the House Committee on Judiciary with the agency's position regarding H.B. No. 87. We respectfully request the Committee to pass this measure favorably, and we thank you very much for your dedicated support.



Committee: Committee on Judiciary
Hearing Date/Time: Thursday, February 7, 2013, 2:00 p.m.
Place: Conference Room 325
Re: Testimony of the ACLU of Hawaii in Opposition to H.B. 87, Relating to Criminal Trespass on Premises of Public Housing

Dear Chair Rhoads and Members of the Committee on Public Safety:

The American Civil Liberties Union of Hawaii ("ACLU of Hawaii") writes in opposition to H.B. 87, which seeks to broaden criminal trespass in the first degree to include a person who enters or remains unlawfully in or upon the premises of a housing project after a reasonable request or warning to leave by housing authorities or a police officer, for the following reasons:

H.B. 87 is unnecessary because the police already have the authority to physically arrest those charged with Simple Trespass.

House Stand. Comm. Rep. No. 330-08 (2008) states that "HPD indicated that public housing projects are considered a quasi-private area, which has prevented arrests for public consumption of liquor and trespassing. This measure would allow arrests to be made."

This proffered justification for this bill (which is similar to that proposed for Act 50 of 2004) is patently false. First, the offense of simple trespass as set forth in H.R.S. § 708-815 applies to "premises" which is defined as any building or real property and includes public housing projects. Second, H.R.S. § 803-6(b) specifically authorizes the optional use of a citation by the police in lieu of an arrest where the offense involved is "a misdemeanor, petty misdemeanor or violation." For over 25 years, it has been clear that §803-6(b) allows police to physically arrest an individual for a violation.¹ Indeed, in enacting §803-6(b), the Legislature intended to "provide for an optional use of the citation in lieu of arrest. The police officer could still make a physical arrest if the situation necessitated such an action."²

Extending the Criminal Trespass Statute to public housing poses grave constitutional concerns similar to those of Act 50 of 2004

¹ State v. Kapoi, 64 Haw. 130, 637 P.2d 1105 (1981) (holding, inter alia, that physical arrest for simple trespass was authorized by §806-3(b)).

² House Stand. Comm. Rep. No. 712 (1975), House Journal, at 1303 (emphasis added).

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Chair Rhoads and JUD Committee Members

February 7, 2013

Page 2 of 3

Extending the current criminal trespass law to quasi-public property poses grave constitutional concerns similar to those of Act 50 of 2004. As some members may recall, in 2004, to combat the “squatting” problem, the legislature proposed an amendment to H.R.S. § 708-814 that simply inserted the words “public property” two times into an existing criminal trespass statute that had applied to commercial premises only. Act 50 of 2004 amended H.R.S. § 708-814 (hereinafter referred to as “Act 50” or “§708-814”) to transform it into a vaguely worded law sweeping in its scope. By its very terms, §708-814 provided that anyone could be banned from public property for up to one-year simply by being given a written trespass warning “stating that the individual’s presence is no longer desired on the property.”³

Although Act 50 of 2004 was proposed to the Hawaii legislature as a necessary tool to combat the homelessness problem, Act 50 was nothing less than a return to the street-sweeping laws of America’s past and no different in substance than those constitutionally infirm laws.

On September 7, 2004, the ACLU of Hawaii filed a lawsuit challenging the validity of Act 50 as to public property on the grounds that it was unconstitutional and gave public officials overly broad powers to ban individuals from using public spaces such as beaches, streets or sidewalks. The lawsuit was based on over six decades of U.S. Supreme Court precedent that condemned the inherent vagueness of laws like the challenged statute. The lawsuit was additionally premised on settled principles of due process as well as the fundamental right to move freely (which is protected under both the U.S. Constitution and Article I, § 2 of the Hawaii Constitution) and traditional First Amendment freedoms.

In 2005, the Legislature, mindful of the sweeping and unintended impact of Act 50, recognized the call to repeal Act 50 and did so for the benefit of all residents and visitors to Hawaii.

H.B. 87 Is Potentially More Dangerous Than Act 50 of 2004

Given the nature of public housing projects, the proposed bill may pose even greater dangers than Act 50. For example, it is possible that the grounds of a particular public housing development should be treated as a public forum. Restricting access to these areas (which are public in nature) would overextend trespass statutes and may very well violate the free speech and association rights of both tenants and visitors.

If passed, H.B. 87 will make entering and remaining unlawfully in state and federal low-income public housing punishable by criminal trespass in the first degree and will result in overly harsh

³ H.R.S. § 708-814(1)(b) (2004).

Chair Rhoads and JUD Committee Members

February 7, 2013

Page 3 of 3

punishments, over-incarceration and wasted state money. This unnecessary, misguided and potentially unconstitutional measure does not accurately reflect sound public policy. We strongly urge this committee to oppose H.B. 87.

Thank you for this opportunity to testify.

Sincerely,
Laurie A. Temple
Staff Attorney
ACLU of Hawaii

About the American Civil Liberties Union of Hawaii

The American Civil Liberties Union of Hawaii ("ACLU") has been the state's guardian of liberty for 47 years, working daily in the courts, legislatures and communities to defend and preserve the individual rights and liberties equally guaranteed to all by the Constitutions and laws of the United States and Hawaii.

The ACLU works to ensure that the government does not violate our constitutional rights, including, but not limited to, freedom of speech, association and assembly, freedom of the press, freedom of religion, fair and equal treatment, and privacy.

The ACLU network of volunteers and staff works throughout the islands to defend these rights, often advocating on behalf of minority groups that are the target of government discrimination. If the rights of society's most vulnerable members are denied, everyone's rights are imperiled.

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