

JAN 22 2015

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A BILL FOR AN ACT

RELATING TO PROCESS SERVERS.

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

1 SECTION 1. Section 707-711, Hawaii Revised Statutes, is
2 amended by amending subsection (1) to read as follows:

3 "(1) A person commits the offense of assault in the second
4 degree if:

5 (a) The person intentionally or knowingly causes
6 substantial bodily injury to another;

7 (b) The person recklessly causes serious or substantial
8 bodily injury to another;

9 (c) The person intentionally or knowingly causes bodily
10 injury to a correctional worker, as defined in section
11 710-1031(2), who is engaged in the performance of duty
12 or who is within a correctional facility;

13 (d) The person intentionally or knowingly causes bodily
14 injury to another with a dangerous instrument;

15 (e) The person intentionally or knowingly causes bodily
16 injury to an educational worker who is engaged in the
17 performance of duty or who is within an educational



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1 facility. For the purposes of this paragraph,
2 "educational worker" means any administrator,
3 specialist, counselor, teacher, or employee of the
4 department of education or an employee of a charter
5 school; a person who is a volunteer, as defined in
6 section 90-1, in a school program, activity, or
7 function that is established, sanctioned, or approved
8 by the department of education; or a person hired by
9 the department of education on a contractual basis and
10 engaged in carrying out an educational function;

11 (f) The person intentionally or knowingly causes bodily
12 injury to any emergency medical services provider who
13 is engaged in the performance of duty. For the
14 purposes of this paragraph, "emergency medical
15 services provider" means emergency medical services
16 personnel, as defined in section 321-222, and
17 physicians, physician's assistants, nurses, nurse
18 practitioners, certified registered nurse
19 anesthetists, respiratory therapists, laboratory
20 technicians, radiology technicians, and social



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workers, providing services in the emergency room of a hospital;

(g) The person intentionally or knowingly causes bodily injury to a person employed at a state-operated or -contracted mental health facility. For the purposes of this paragraph, "a person employed at a state-operated or -contracted mental health facility" includes health care professionals as defined in section 451D-2, administrators, orderlies, security personnel, volunteers, and any other person who is engaged in the performance of a duty at a state-operated or -contracted mental health facility;

(h) The person intentionally or knowingly causes bodily injury to a person who:

(i) The defendant has been restrained from, by order of any court, including an ex parte order, contacting, threatening, or physically abusing pursuant to chapter 586; or

(ii) Is being protected by a police officer ordering the defendant to leave the premises of that



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1 protected person pursuant to section 709-906(4),

2 during the effective period of that order; or

3 (i) The person intentionally or knowingly causes bodily
4 injury to any firefighter or water safety officer who
5 is engaged in the performance of duty. For the
6 purposes of this paragraph, "firefighter" has the same
7 meaning as in section 710-1012 and "water safety
8 officer" means any public servant employed by the
9 United States, the State, or any county as a lifeguard
10 or person authorized to conduct water rescue or ocean
11 safety functions.

12 (j) The person intentionally causes bodily injury to a
13 process server who is engaged in the performance of
14 duty, with the intent to obstruct the process server's
15 performance of duty or with the intent to retaliate
16 against the process server for performing service.
17 For the purpose of this paragraph, "process server"
18 means any person authorized under the supreme court
19 rules or section 353C-10 to serve process."

20 SECTION 2. Section 708-813, Hawaii Revised Statutes, is
21 amended to read as follows:



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1 **"§708-813 Criminal trespass in the first degree. (1) A**

2 person commits the offense of criminal trespass in the first
3 degree if:

4 (a) That person knowingly enters or remains unlawfully:

5 (i) In a dwelling; or

6 (ii) In or upon the premises of a hotel or apartment
7 building;

8 (b) That person:

9 (i) Knowingly enters or remains unlawfully in or upon
10 premises that are fenced or enclosed in a manner
11 designed to exclude intruders; and

12 (ii) Is in possession of a firearm, as defined in
13 section 134-1, at the time of the intrusion; or

14 (c) That person enters or remains unlawfully in or upon
15 the premises of any public school as defined in
16 section 302A-101, or any private school, after
17 reasonable warning or request to leave by school
18 authorities or a police officer; provided however,
19 such warning or request to leave shall be unnecessary
20 between 10:00 p.m. and 5:00 a.m.



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(2) Subsection (1) shall not apply to a process server who enters or remains in or upon the premises of another, unless the premises are secured with a fence and locked gate, for the purpose of making a good faith attempt to serve process upon any of the following:

(a) An owner or occupant of the premises;

(b) An agent of the owner or occupant of the premises; or

(c) A lessee of the premises.

(3) As used in this section, "process server" means any person authorized under the supreme court rules or section 353C-10 to serve process.

~~[(2)]~~ (4) Criminal trespass in the first degree is a misdemeanor."

SECTION 3. Section 708-814, Hawaii Revised Statutes, is amended to read as follows:

"§708-814 Criminal trespass in the second degree. (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;



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1 (b) The person enters or remains unlawfully in or upon
2 commercial premises after a reasonable warning or
3 request to leave by the owner or lessee of the
4 commercial premises, the owner's or lessee's
5 authorized agent, or a police officer; provided that
6 this paragraph shall not apply to any conduct or
7 activity subject to regulation by the National Labor
8 Relations Act.

9 For the purposes of this paragraph, "reasonable
10 warning or request" means a warning or request
11 communicated in writing at any time within a one-year
12 period inclusive of the date the incident occurred,
13 which may contain but is not limited to the following
14 information:

15 (i) A warning statement advising the person that the
16 person's presence is no longer desired on the
17 property for a period of one year from the date
18 of the notice, that a violation of the warning
19 will subject the person to arrest and prosecution
20 for trespassing pursuant to section



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1 708-814(1)(b), and that criminal trespass in the
2 second degree is a petty misdemeanor;

3 (ii) The legal name, any aliases, and a photograph, if
4 practicable, or a physical description, including
5 but not limited to sex, racial extraction, age,
6 height, weight, hair color, eye color, or any
7 other distinguishing characteristics of the
8 person warned;

9 (iii) The name of the person giving the warning along
10 with the date and time the warning was given; and

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

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

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



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(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". The sign or signs, containing letters not less than two inches in height, shall be placed 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



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(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 not less than two inches in height and shall be placed at reasonable intervals 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



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1 installation or maintenance of utility poles, signage,
2 and irrigation facilities or systems; minor
3 alterations undertaken for the preservation or prudent
4 management of the unimproved or unused land, including
5 the installation or maintenance of fences, trails, or
6 pathways; maintenance activities, including forest
7 plantings and the removal of weeds, brush, rocks,
8 boulders, or trees; and the removal or securing of
9 rocks or boulders undertaken to reduce risk to
10 downslope properties; or

11 (e) The person enters or remains unlawfully in or upon the
12 premises of any public housing project or state low-
13 income housing project, as defined in section 356D-1,
14 356D-51, or 356D-91, after a reasonable warning or
15 request to leave by housing authorities or a police
16 officer, based upon an alleged violation of law or
17 administrative rule; provided that a warning or
18 request to leave shall not be necessary between 10:00
19 p.m. and 5:00 a.m. at any public housing project or
20 state low-income housing project that is closed to the
21 public during those hours and has signs, containing



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1 letters not less than two inches in height, placed
2 along the boundary of the project property, at all
3 entrances to the property, in a manner and position to
4 be clearly noticeable from outside the boundary of the
5 project property and to give sufficient notice that
6 the public housing project or state low-income housing
7 project is closed to the public during those hours.

8 (2) Subsection (1) shall not apply to a process server who
9 enters or remains in or upon the land or premises of another,
10 unless the land or premises are secured with a fence and locked
11 gate, for the purpose of making a good faith attempt to serve
12 process upon any of the following:

13 (a) An owner or occupant of the land or premises;

14 (b) An agent of the owner or occupant of the land or
15 premises; or

16 (c) A lessee of the land or premises.

17 (3) As used in this section[,—"housing"]:

18 "Housing authorities" means resident managers or managers,
19 tenant monitors, security guards, or others officially
20 designated by the Hawaii public housing authority.



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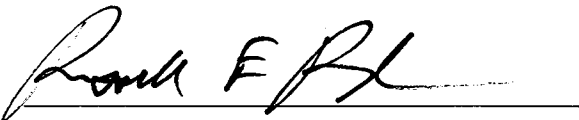
1 "Process server" means any person authorized under the
2 supreme court rules or section 353C-10 to serve process.

3 [~~3~~] (4) Criminal trespass in the second degree is a
4 petty misdemeanor."

5 SECTION 4. This Act does not affect rights and duties that
6 matured, penalties that were incurred, and proceedings that were
7 begun before its effective date.

8 SECTION 5. Statutory material to be repealed is bracketed
9 and stricken. New statutory material is underscored.

10 SECTION 6. This Act shall take effect upon its approval.

11 BR INTRODUCED BY: 



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Report Title:

Process Server; Assault in the Second Degree; Criminal Trespass

Description:

Affords process servers additional protection as a protected class under the second degree assault statute when performing their duties. Shields process servers from prosecution under criminal trespass statutes when performing their duties.

The summary description of legislation appearing on this page is for informational purposes only and is not legislation or evidence of legislative intent.

