

Honolulu, Hawaii **ADVII 8**, 2016 RE: S.B. No. 2816 S.D. 1 H.D. 2

Honorable Joseph M. Souki Speaker, House of Representatives Twenty-Eighth State Legislature Regular Session of 2016 State of Hawaii

Sir:

Your Committee on Judiciary, to which was referred S.B. No. 2816, S.D. 1, H.D. 1, entitled:

"A BILL FOR AN ACT RELATING TO CRIMINAL TRESPASS,"

begs leave to report as follows:

The purpose of this measure is to:

- Establish the offense of criminal trespass onto state lands as a petty misdemeanor;
- (2) Amend the offense of criminal trespass in the second degree to apply to agricultural property owned by the government; and
- (3) Require the Department of the Attorney General to report to the Legislature on the use of the new and amended statutes.

The Department of the Attorney General, Department of Land and Natural Resources, and Department of Transportation testified in support of this measure. The American Civil Liberties Union of Hawaii opposed this measure.

In Jones v. City of Los Angeles, 444 F.3d 1118 (9th Cir. 2006), vacated by settlement, 505 F.3d 1006 (9th Cir. 2007), the Ninth Circuit Court of Appeals held that laws that criminalize a person who is sitting, lying, or sleeping on public property when

SB2816 HD2 HSCR JUD HMS 2016-3196

STAND. COM. REP. NO. 1710 -16 Page 2

that person is homeless and has nowhere else to go are a violation of the protections against cruel and unusual punishment guaranteed by the Eighth Amendment to the United States Constitution. The court held that "involuntary sitting, lying, or sleeping on public sidewalks" is an "unavoidable consequence of being human and homeless without shelter in the City of Los Angeles."

Similarly, in Hawaii, a person cannot be arrested or prosecuted for the mere status of homelessness. On the basis of assurances of the Attorney General, your Committee understands and expects that the State will not sanction the arrest or prosecution of homeless persons where appropriate shelter is unavailable. Your Committee urges county prosecutors to examine the relevant federal case law before prosecuting in these circumstances.

Your Committee notes that arrests themselves create criminal records and that criminal prosecutions are highly burdensome for defendants as well as for the entire criminal justice system. Arrests and prosecutions should be avoided when reasonable alternatives exist.

However, where a homeless person is unlawfully on state property and refuses available shelter, that person may be subject to arrest and prosecution pursuant to this measure. Your Committee wishes to emphasize that while a person's status as homeless may prevent arrest or incarceration for trespass as such, that status does not immunize the person from prosecution for other crimes, such as theft or vandalizing state property. This measure does not change the law in that regard.

Your Committee has amended this measure by:

- (1) Changing its findings and purpose section to reflect that this measure cannot and is not intended to abridge the constitutional rights of persons who are homeless; and
- (2) Making additional technical, nonsubstantive amendments for purposes of clarity and consistency.

As affirmed by the record of votes of the members of your Committee on Judiciary that is attached to this report, your Committee is in accord with the intent and purpose of S.B. No. 2816, S.D. 1, H.D. 1, as amended herein, and recommends that it pass Third Reading in the form attached hereto as S.B. No. 2816, S.D. 1, H.D. 2.



STAND. COM. REP. NO. 1710 -16 Page 3

Respectfully submitted on behalf of the members of the Committee on Judiciary,

KARL RHOADS, Chair



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State of Hawaii House of Representatives The Twenty-eighth Legislature



Record of Votes of the Committee on Judiciary

Bill/Resolution No.: SBA816, SD1, HD1 Committee Referral: WAL, JUD Date: 04/05/16				
The committee is reconsidering its previous decision on the measure.				
The recommendation is to: Pass, unamended (as is) Pass, with amendments (HD) Hold Pass short form bill with HD to recommit for future public hearing (recommit) 				
JUD Members	Ayes	Ayes (WR)	Nays	Excused
1. RHOADS, Karl (C)				
2. SAN BUENAVENTURA, Joy A. (VC)				
3. BELATTI, Della Au				
4. BROWER, Tom				
5. CREAGAN, Richard P.				
6. HASHEM, Mark J.				
7. KAWAKAMI, Derek S.K.	光			
8. LEE, Chris	\mathbf{h}			
9. MORIKAWA, Dee				
10. NAKASHIMA, Mark M.				
11. TAKAYAMA, Gregg				
12. WOODSON, Justin H.				
13. McDERMOTT, Bob	\mathbf{N}			
14. THIELEN, Cynthia				
TOTAL (14)		2	l	4
The recommendation is: Adopted If joint referral, did not support recommendation.				
Vice Chair's or designee's signature:				
Distribution: Original (White) - Committee Diplicate (Yellow) - Chief Clerk's Office Duplicate (Pink) - HMSO				