

DAVID Y. IGE
GOVERNOR OF HAWAII



**STATE OF HAWAII
DEPARTMENT OF LAND AND NATURAL RESOURCES**

POST OFFICE BOX 621
HONOLULU, HAWAII 96809

**Testimony of
SUZANNE D. CASE
Chairperson**

SUZANNE D. CASE
CHAIRPERSON
BOARD OF LAND AND NATURAL RESOURCES
COMMISSION ON WATER RESOURCE MANAGEMENT

ROBERT K. MASUDA
FIRST DEPUTY

KALEO MANUEL
DEPUTY DIRECTOR - WATER

AQUATIC RESOURCES
BOATING AND OCEAN RECREATION
BUREAU OF CONVEYANCES
COMMISSION ON WATER RESOURCE MANAGEMENT
CONSERVATION AND COASTAL LANDS
CONSERVATION AND RESOURCES ENFORCEMENT
ENGINEERING
FORESTRY AND WILDLIFE
HISTORIC PRESERVATION
KAHOOLAWE ISLAND RESERVE COMMISSION
LAND
STATE PARKS

**Before the Senate Committees on
PUBLIC SAFETY, VETERANS & MILITARY AFFAIRS**

**Wednesday, February 6, 2019
10:00 PM
State Capitol, Conference Room 016**

**In consideration of
HOUSE BILL 834
RELATING TO PUBLIC REAL PROPERTY**

House Bill 834 requires the Department of Public Safety to establish a temporary sheriff patrol program and the Governor's Coordinator on Homelessness to establish a program contracting private security for the enforcement of laws and rules prohibiting trespassing, camping, or being present after closing hours on certain state real property. **The Department of Land and Natural Resources (DLNR) appreciates the intent of the bill and offers the following comments.**

DLNR defers to Public Safety in regard to their minimum shift staffing requirements and hiring preferences. However, we would suggest that two officers are not enough to safely staff a patrol program. DLNR is also concerned that the positions are temporary. Our department has not been able to hire temporary positions into pilot programs because there is little incentive to take a temporary law enforcement position.

DLNR defers to the Governor's Coordinator on Homelessness with regard to hiring private security to patrol state lands. However, we note that private security does not have law enforcement authority and therefore cannot cite people for trespass or other violations.

DLNR notes that there is currently an enforcement program in place to address enforcement and property storage on all state lands. However, since trespass is only one aspect of overall law enforcement, it may be better to look at the overall needs of the state's law enforcement branches and how best to address homelessness within their larger mission.

DLNR also asks for clarification on the applicability of the temporary program (paragraph 2). DLNR owns lands controlled by many other state agencies and the counties. In addition, DLNR leases lands to private entities, and those lands are treated as private property for the term of the lease. If this bill goes into effect does it apply to all lands owned by DLNR regardless of the

status of the land? In general, DLNR does not do enforcement on lands it owns but are not under its direct control.

Thank you for the opportunity to testify on this measure.



**TESTIMONY OF
THE DEPARTMENT OF THE ATTORNEY GENERAL
THIRTIETH LEGISLATURE, 2019**

LATE

ON THE FOLLOWING MEASURE:

H.B. NO. 834, RELATING TO PUBLIC REAL PROPERTY.

BEFORE THE:

HOUSE COMMITTEE ON PUBLIC SAFETY, VETERANS, AND MILITARY AFFAIRS

DATE: Wednesday, February 6, 2019 **TIME:** 10:00 a.m.

LOCATION: State Capitol, Room 430

TESTIFIER(S): Clare E. Connors, Attorney General, or
Lisa M. Itomura, Deputy Attorney General

Chair Takayama and Members of the Committee:

The Department of the Attorney General provides the following comments regarding this bill.

Part I of the bill requires the Department of Public Safety ("PSD") to establish a "temporary sheriff patrol program" that would enforce laws and rules prohibiting individuals from trespassing, camping, or being present after hours on state real property under the ownership, control, or management of the Department of Transportation or the Department of Land and Natural Resources. Part II of the bill requires the Governor's coordinator on homelessness ("Coordinator") to contract with private security to enforce laws and rules prohibiting individuals from trespassing, camping, or being present after hours on state real property under the ownership, control, or management of the Department of Transportation or the Department of Land and Natural Resources.

The bill authorizes PSD to establish 2.00 temporary full-time equivalent deputy sheriff positions and appropriates an unspecified amount for the temporary patrol program. The bill also appropriates \$500,000 to the Coordinator to contract with private security. PSD and the Coordinator are to prepare reports to the Legislature recommending whether to extend the patrol programs, permanently establish them, or terminate them.

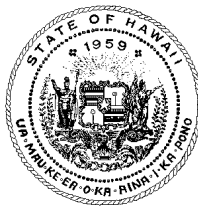
We have concerns that private security personnel do not have police powers and thus cannot enforce laws and rules on state real property. We therefore suggest clarifying section 12 to read as follows:

SECTION 12. Governor's coordinator on homelessness private security program; establishment; operation. The governor's coordinator on homelessness shall establish a program to contract with for private security ~~to enforce laws and rules prohibiting an individual from trespassing, camping, or being present after~~ closing hours on state real property.

We also note that section 17 of the bill appropriates \$500,000 directly to the Coordinator. We recommend amending page 10, lines 7-8 and 11-12, of the bill to specify an agency, rather than the Coordinator, as the expending entity. We understand that the Coordinator is administratively attached to the Department of Human Services.

Thank you for the opportunity to provide these comments.

DAVID Y. IGE
GOVERNOR



NOLAN P. ESPINDA
DIRECTOR

Maria C. Cook
Deputy Director
Administration

Jodie F. Maesaka-Hirata
Deputy Director
Corrections

Renee R. Sonobe Hong
Deputy Director
Law Enforcement

LATE

STATE OF HAWAII
DEPARTMENT OF PUBLIC SAFETY
919 Ala Moana Boulevard, 4th Floor
Honolulu, Hawaii 96814

No. _____

TESTIMONY ON HOUSE BILL 834
RELATING TO PUBLIC REAL PROPERTY
by
Nolan P. Espinda, Director

House Committee on Public Safety, Veterans, and Military Affairs
Representative Gregg Takayama, Chair
Representative Cedric Asuega Gates, Vice Chair

Wednesday, February 6, 2019; 10:00 a.m.
State Capitol, Conference Room 430

Chair Takayama, Vice Chair Gates, and Members of the Committee:

The Department of Public Safety (PSD) **opposes** House Bill (HB) 834, which requires PSD to establish a temporary sheriff patrol program to enforce laws or rules regarding trespassing, camping, or being present after closure hours on Department of Transportation (DOT) or Department of Land and Natural Resources (DLNR) lands. While the department appreciates the intent of this bill, PSD opposes this bill for the following reasons.

First, under the Governor's Coordinator on Homelessness, the State has adopted a comprehensive framework, following laws and case law under constitutional guidelines, that focuses on three primary components – affordable housing, health and human services, and public safety. Public safety law enforcement efforts have included close cooperation with PSD Sheriff Division, DLNR conservation resource officers (CREOs), and sometimes, county police, to address unauthorized encampments, trespassing, and other violations on lands under DOT, DLNR, Department of Agriculture, Hawaii Public Housing Authority, the University of Hawaii, the Department of Agriculture, and other agencies. Together, law enforcement

agencies working cooperatively, sometimes as a force multiplier for large operations, have been able to address violations of trespassing and camping on lands in addition to DOT and DLNR. It is not feasible for a temporary sheriff program staffed with two temporary full-time deputy sheriffs to shoulder this responsibility.

Second, this measure proposes only two temporary full-time positions. There is little incentive for prospective applicants to pursue temporary full-time positions, especially since qualifying to be commissioned as deputy sheriff by the PSD Director requires the completion of a six month PSD law enforcement recruitment academy. More importantly, two temporary deputy sheriffs are not sufficient to safely staff such patrol unit. Not including sick leave and training days at a minimum, these two positions would be available for a maximum of one shift, and one deputy should not be patrolling solo. A single arrest by this two-person sheriff patrol team would terminate any scheduled and coordinated operation, as the deputy sheriffs would be taken off-line to process the arrest.

Third, under Section 3(c) on page 3, line 17 – page 4 line 3, the deputy sheriff shall first make a request to leave, then must cite or arrest for failure to refuse or return to the property. This requirement may be inconsistent with the legal requirements under statute or criminal administrative rules. For example, some statutes, like camping, do not impose this additional requirement of a request to leave. Further, the law enforcement decision to cite or arrest should depend on the specific facts and circumstances of each case. There are many instances which demand medical attention or immediate mental health services rather than arrest or citation. In addition, deputy sheriffs utilize social contact referral through Law Enforcement Assisted Diversion (LEAD) when appropriate.

For these reasons, PSD opposes this measure. Thank you for the opportunity to testify on this measure.



EXECUTIVE CHAMBERS
HONOLULU

DAVID Y. IGE
GOVERNOR

February 3, 2019

TO: The Honorable Representative Gregg Takayama, Chair
House Committee on Public Safety, Veterans, & Military Affairs

FROM: Scott Morishige, MSW, Governor's Coordinator on Homelessness

SUBJECT: **HB 834 – RELATING TO PUBLIC REAL PROPERTY**

Hearing: Wednesday, February 6, 2019, 10:00 a.m.
Conference Room 430, State Capitol

POSITION: The Governor's Coordinator on Homelessness appreciates the intent of this measure, respectfully offers comments and suggests amendments.

PURPOSE: The purpose of the bill is to require the Department of Public Safety to establish a temporary sheriff patrol program and the Governor's Coordinator on Homelessness to establish a program contracting private security for the enforcement of law and rules prohibiting trespassing, camping, or being present after closing hours on certain state real property under the ownership, control, or management of the Hawaii Department of Transportation (HDOT) or Department of Land and Natural Resources (DLNR).

Homelessness remains one of the most pressing challenges facing Hawaii, and the State has adopted a comprehensive framework to address homelessness that focuses on three primary leverage points – affordable housing, health and human services, and public safety. The public safety aspect of the framework includes coordination with State law enforcement and land management agencies to address unauthorized encampments and trespassing on public lands in a manner that respects the legal rights of homeless individuals, addresses health and safety concerns, and provides a connection to housing and supportive services.

The Coordinator works closely with the Department of Public Safety (PSD) Sheriff Division, DLNR conservation officers, and HDOT to address unauthorized encampments and

trespassing on State lands. In 2018, coordinated efforts addressed unauthorized encampments, trespassing, and other related violations (e.g. unpermitted structures, sidewalk obstruction, etc.) on State properties in all four counties, including areas under the jurisdiction of HDOT, DLNR, University of Hawaii, Department of Education, Department of Agriculture, Department of Accounting and General Services, Department of Hawaiian Home Lands, Hawaii Housing and Finance Development Corporation, Agribusiness Development Corporation, Hawaii Community Development Authority, Hawaii Public Housing Authority and other State agencies. During that same period, 423 homeless individuals were encountered by enforcement efforts on State lands and placed in shelter, housing, or other long-term placement (e.g. residential treatment, medical respite, etc.).

The role of the Coordinator in enforcement actions is to connect efforts with homeless outreach services so that homeless individuals are offered access to shelter and other services. The Coordinator is not a law enforcement or land management agency, and does not have the necessary expertise to establish and procure security services as described in Part II. Currently, State land management agencies have discretion and authority to contract private security for their properties without this action having to be coordinated through an outside office. In addition, the security program described in Part II does not have a specific focus on addressing homelessness, but appears intended to address general acts of trespass and unpermitted camping, which are not exclusive to homeless individuals. If this measure proceeds, the Coordinator suggests an amendment to place this responsibility with a more appropriate State agency.

The Coordinator also notes homelessness is not a crime. This measure limits the response of law enforcement to mandate criminal citation or arrest if an individual is encountered trespassing or camping without permission on HDOT or DLNR lands. Recent court decisions in the U.S. Ninth Circuit Court of Appeals, such as *Jones v. City of Los Angeles* and *Martin v. City of Boise*, found it is a violation of Eighth Amendment protections against cruel and unusual punishment to arrest someone for trespass or violation of camping laws if that person is homeless and has no place else to seek shelter. In addition, law enforcement occasionally encounters individuals who require medical intervention and immediate

connection to appropriate treatment services. Law enforcement agencies also utilize discretion to refer low-level offenders to programs such as Law Enforcement Assisted Diversion (LEAD) if appropriate. Accordingly, the Coordinator suggests amending the measure to provide law enforcement with discretion to respond appropriately based on the law. Specifically, the Coordinator proposes amending section 3, subsection (c), beginning on page 3, line 17 to page 4, line 3 as follows:

(c) To the extent possible, when observing or discovering a violation of a law or rule prohibiting trespassing, camping, or being present after closing hours on state real property, the deputy sheriffs first shall request the violator to leave the state real property. If the violator refuses to leave the state real property or leaves and then returns to the state real property in violation of the law or rule, the deputy sheriffs shall take the appropriate steps necessary in accordance with the law.

Finally, it is unclear whether the measure intends for the temporary sheriff patrol and security programs to apply to lands owned by DLNR or HDOT in which jurisdiction has been granted to another entity by Executive Order or another mechanism (e.g. lease, revocable permit, etc). For example, certain state lands are owned by DLNR, but jurisdiction is granted to the counties by Executive Order for use as county beach parks. As currently drafted, the measure applies to real property “under the ownership, control, or management” of HDOT or DLNR. The Coordinator asks that this question of jurisdiction be clarified if the measure proceeds.

Thank you for the opportunity to testify on this bill.



HB834
RELATING TO PUBLIC REAL PROPERTY

House Committee on Public Safety, Veterans, & Military Affairs

February 6, 2019

10:00 p.m.

Conference Room 430

The Office of Hawaiian Affairs (OHA) Committee on Beneficiary Advocacy and Empowerment will recommend that the Board of Trustees provide the following **COMMENTS** on SB834, which would establish a temporary sheriff patrol program within the Department of Public Safety and require the Governor's Coordinator on Homelessness to contract private security to enforce laws relating to trespassing, camping, and closing hours on property owned or controlled by the Department of Transportation (DOT) and Department of Land and Natural Resources (DLNR). **This measure may have a chilling effect on the perpetuation of constitutionally-protected Native Hawaiian traditional and customary practices and, moreover, has a high likelihood of further criminalizing the homeless community, potentially exacerbating both the homelessness and mass incarceration crises facing our islands.**

While OHA appreciates the desire to protect state land and property, OHA is concerned with SB834's potential chilling effect on the perpetuation of constitutionally protected Native Hawaiian traditional and customary practices. State lands, especially those under DLNR's control, are frequently less than fully developed and often contain a variety of natural and cultural resources and sites that are necessary for the exercise of Native Hawaiian traditional and customary practices; many such practices may involve activities that could be interpreted as or otherwise contradictory to general rules regarding trespassing, camping, or closed hours. Native Hawaiians may also have to traverse or occupy "closed" state lands under the control of the Department of Transportation, such as those surrounding state highways and other infrastructure, to access wilderness areas that similarly host deeply valued resources and sites essential to the continuation of our traditional and customary practices. **Should this measure be enacted, Hawaiian practitioners may be subject to potential confrontation with private security and temporary sheriffs not experienced in facilitating Native Hawaiian cultural access, impeding their ability to conduct their practices; the attendant risk of citation or arrest could in itself substantially discourage Native Hawaiian cultural practitioners from accessing areas of cultural significance, and perpetuating their otherwise protected cultural practices.**

Moreover, OHA believes that this measure will enable further criminalization of the state's homeless population, exacerbating multiple complex problems relating to both homelessness and our criminal justice system. OHA understands the difficulty of balancing the integrity of state property with the mental and physical integrity of members of our most vulnerable population. However, **subjecting homeless individuals to unnecessary criminal liability only reduces their ability to obtain gainful employment and otherwise maintain**

stability in their lives, and may further foster distrust and an increased sense of alienation from government generally, including government-funded services and programs. This measure would only lead to an increase in the number of homeless individuals and families subjected to criminal liability, simply for seeking shelter on largely undeveloped state lands. Moreover, without a substantial investment in and ample expansion of temporary shelter space and affordable housing options, this measure may only serve to push homeless people from state lands into surrounding communities and into the most socially and societally expensive option: our already overtaxed criminal justice system. Using such a punitive response to address ostensible public health and socioeconomic issues is the most expensive way to approach these issues and is antithetical to the efforts of criminal justice reform currently being undertaken to reduce the social, economic, and multigenerational impacts of overincarceration.ⁱ Thus, this measure may further exacerbate both the homelessness crisis and overcrowding in our detention facilities statewide.

OHA notes that our beneficiaries may be at particular risk of being or becoming homeless, and are therefore likely to be disproportionately criminalized by this measure, compounding their disparate treatment in the criminal justice system. In recent years, Native Hawaiians accounted for almost one-third of O‘ahu’s homeless populationⁱⁱ and more than one quarter of those who utilize homeless services.ⁱⁱⁱ In addition to high rates of homelessness, 14.1% of Native Hawaiian households include a “hidden homeless” member, compared to the only 4.2% of other households.^{iv} 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 overcrowded conditions.^v Such data suggests that changes in the economic conditions of the state and county may result in a disproportionate number of Native Hawaiians becoming homeless as housing demand grows, and that these projected homeless families will also likely be 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 of the criminal justice process,^{vi} and may be exacerbated by this measure’s further criminalization of our homeless population.**

Mahalo for the opportunity to testify on this measure.

ⁱ HCR 85 (2016) TASK FORCE, CREATING BETTER OUTCOMES, SAFER COMMUNITIES: FINAL REPORT OF THE HOUSE CONCURRENT RESOLUTION 85 TASK FORCE ON PRISON REFORM TO THE HAWAII LEGISLATURE 93 (2018), *available at* https://19of32x2yl33s8o4xza0gf14-wpengine.netdna-ssl.com/wp-content/uploads/HCR-85-Task-Force-on-Prison-Reform_Final-Report_12.28.18.pdf.

ⁱⁱ PARTNERS IN CARE, OAHU’S 2017 POINT IN TIME COUNT- ANALYSIS ON NATIVE HAWAIIANS (2017).

ⁱⁱⁱ UNIVERSITY OF HAWAII ‘I, HOMELESS SERVICE UTILIZATION REPORT 6 (2017), *available at* http://uhfamily.hawaii.edu/publications/brochures/3f3d5_HomelessServiceUtilization2017.pdf.

^{iv} HAWAII HOUSING FINANCE AND DEVELOPMENT CORPORATION, 2016 HAWAII HOUSING PLANNING STUDY 73 (2016), *available at* https://dbedt.hawaii.gov/hhfdc/files/2016/12/State_HHPS2016_Report_111416-FINAL-122216.pdf.

^v *Id.* at 70.

^{vi} OHA’s 2010 study found that the disproportionate impact of the criminal justice system on Native Hawaiians accumulates at every stage noting that Native Hawaiians made up “24 percent of the general population, but 27 percent of all arrests, 33 percent of people in pretrial detention, 29 percent of people sentenced to probation, 36 percent admitted to prison in 2009, [and] 39 percent of the incarcerated population.” THE OFFICE OF HAWAIIAN AFFAIRS, THE DISPARATE TREATMENT OF NATIVE HAWAIIANS IN THE CRIMINAL JUSTICE SYSTEM 10 (2010), *available at* http://www.oha.org/wp-content/uploads/2014/12/ir_final_web_rev.pdf Moreover, controlling for many common factors including type of charge, the study revealed that Native Hawaiians were more likely to be found guilty, receive a prison sentence, and receive a longer prison sentence or probation term than most other ethnic groups.

Id. at 28-38. More recently, the HCR85 Task Force noted that Native Hawaiians continue to be overrepresented in our prison system, constituting just 21% of the statewide population, and just 18% of the adult population, but 37% of the incarcerated population. HCR 85 (2016) TASK FORCE, SUMMARY AND KEY RECOMMENDATIONS 2 (2018), available at https://19of32x2yl33s8o4xza0gf14-wpengine.netdna-ssl.com/wp-content/uploads/HCR85Summary_FINALv2.pdf.

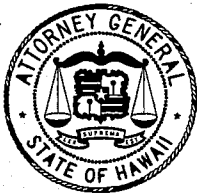
HB-834

Submitted on: 2/2/2019 8:20:16 AM

Testimony for PVM on 2/6/2019 10:00:00 AM

Submitted By	Organization	Testifier Position	Present at Hearing
Alan Urasaki	Individual	Support	No

Comments:



**TESTIMONY OF
THE DEPARTMENT OF THE ATTORNEY GENERAL
THIRTIETH LEGISLATURE, 2019**

ON THE FOLLOWING MEASURE:

H.B. NO. 834, RELATING TO PUBLIC REAL PROPERTY.

DATE

DATE

BEFORE THE:

HOUSE COMMITTEE ON PUBLIC SAFETY, VETERANS, AND MILITARY AFFAIRS

DATE: Wednesday, February 6, 2019 **TIME:** 10:00 a.m.

LOCATION: State Capitol, Room 430

TESTIFIER(S): Clare E. Connors, Attorney General, or
Lisa M. Itomura, Deputy Attorney General

Chair Takayama and Members of the Committee:

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We have concerns that private security personnel do not have police powers and thus cannot enforce laws and rules on state real property. We therefore suggest clarifying section 12 to read as follows:

SECTION 12. Governor's coordinator on homelessness private security program; establishment; operation. The governor's coordinator on homelessness shall establish a program to contract with for private security to enforce laws and rules prohibiting an individual from trespassing, camping, or being present after closing hours on state real property.

We also note that section 17 of the bill appropriates \$500,000 directly to the Coordinator. We recommend amending page 10, lines 7-8 and 11-12, of the bill to specify an agency, rather than the Coordinator, as the expending entity. We understand that the Coordinator is administratively attached to the Department of Human Services.

Thank you for the opportunity to provide these comments.