



UNIVERSITY OF HAWAII SYSTEM

‘ŌNAEHANA KULANUI O HAWAII

Legislative Testimony

Hō'ike Mana'o I Mua O Ka 'Aha'ōlelo

Testimony Presented Before the
Senate Committee on Water and Land
March 13, 2023 at 1:00 p.m.

By

Kalbert K. Young

Vice President for Budget and Finance/Chief Financial Officer
University of Hawai'i System

HB 364 – RELATING TO TRESPASS

Chair Inouye, Vice Chair Elefante, and Members of the Committee:

Thank you for the opportunity to testify on this measure, which clarifies that either state or county law enforcement officers may enforce trespass violations on public lands regardless of whether that land is owned or controlled by the state or a county. The University of Hawai'i (UH) System supports this measure, because it will make government more effective and expedite the enforcement of trespass laws.

The UH can attest that there is a public benefit to clarifying this issue. It is already the case that law enforcement can enforce trespass under existing statutes, e.g., [HRS §708-814.7](#), entitled "Criminal trespass onto state lands." However, the UH and I have witnessed first-hand how jurisdictional uncertainties have limited the vigor, and thereby, cooperation at which county and state law enforcement officers have been able to effectuate removing trespassers from public property – even when those trespassers were explicitly preventing public agencies from providing public services.

Although this bill may only succeed in re-iterating the authority that is already codified in statutes, I believe that such restatement will serve to make clearer that either state or county law enforcement can enforce trespass violations regardless of which government entity owns or controls a parcel of public land. The bill will also further convey the legislature's intent that enforcing trespass statutes already on the books is important to ensuring the public's health, safety, and welfare as well as the proper management of public lands.

Thank you for the opportunity to testify on this measure.



HB364
RELATING TO THE LAND USE COMMISSION
Senate Committee on Water and Land

March 13, 2023

1:00 PM

Room 229

The Office of Hawaiian Affairs (OHA) **OPPOSES** HB364, which would compel law enforcement officers to further criminalize one of the most vulnerable groups of people in Hawai'i – the homeless and houseless. **OHA not only maintains concerns with this measure's potential to enable abuses of basic civil rights, but OHA is also concerned that this measure would disparately impact Native Hawaiians, who are already disproportionately represented among Hawai'i's houseless. OHA asks that this measure be deferred, however, should the Legislature insist on this measure's passage, OHA offers amendments to mitigate our concerns:**

OHA wishes to emphasize that this measure would remove state and county law enforcement officer discretion from determining whether an arrest should be made, and instead, it would compel that officer to make an arrest. HRS §708-814.7 establishes criminal trespass onto state lands, a petty misdemeanor punishable by up to 30 days in jail and a fine of up to \$1,000.¹ This measure would essentially compel the effect of law enforcement sweeps and arrests of homeless and houseless populations on public lands. **OHA offers the following amendment by changing "shall" to "may" in order to, at the very least, restore law enforcement officer discretion, so they may have the choice to act compassionately and humanely, when interacting with our most vulnerable populations. OHA also offers the following language to ensure that Native Hawaiians, in the exercise of their constitutionally protected rights, are not criminalized and that these are not eroded:**

"§708-_____ **Enforcement of trespass laws on public land.** When trespass involves public land, any state or county law enforcement officer may be authorized to and may enforce the trespass laws of this part without regard to whether the land is owned by the State or county; provided that nothing in this section shall be construed to alter the existing responsibility of law enforcement officers to enforce, as applicable, the laws of the State, or to alter the respective jurisdictional boundaries observed by state and county law enforcement officers. Nothing contained in this section shall diminish,

¹ Haw. Rev. Stat. §701-107(4); Haw. Rev. Stat. §706-640(e).



HB364
RELATING TO THE LAND USE COMMISSION
Senate Committee on Water and Land

alter, or amend any existing rights, privileges or practices of the Native Hawaiian people; nor shall the obligations of the State to the Native Hawaiian people be absolved.”

As the principal public agency in the State responsible for the performance, development, and coordination of programs and activities relating to Native Hawaiians,² OHA takes care to note that Native Hawaiians and other Pacific Islanders were 265% more likely to represent people experiencing homelessness compared to the general population of O‘ahu.³ Native Hawaiians are disproportionately and “dramatically over-represented” at 42% of O‘ahu’s homeless population, despite only comprising 19% of the island’s total population.⁴

Native Hawaiians continue to endure inequities and disparities that stem from unresolved historical injustices⁵ – injustices that established systems of oppression and institutions of racism that have yet to be dismantled and which persist in their severing of Native Hawaiians from their ancestral lands, their annihilation of Native Hawaiian presence in the Hawaiian Islands, and their attempted erasure of Native Hawaiian identity.⁶ The State of Hawai‘i, on the condition of its admission to the Union,⁷ was obligated with an extra duty of care to the Native Hawaiian people,⁸ as a result of these historical injustices. The State reinforced that extra duty of care for the betterment of conditions of Native Hawaiians by enshrining this founding principle within the Hawai‘i State Constitution.⁹ The State has continuously acknowledged its extra duty of care to the Native Hawaiian people through additional statutory obligations vested in OHA¹⁰ and in recognition of Native Hawaiians as the only indigenous, aboriginal, and maoli people of Hawai‘i.¹¹

² HRS §10-3.

³ Partners In Care, O‘ahu Continuum of Care, *2022 Point In Time Count*.

⁴ Partners in Care, O‘ahu Continuum of Care, *Native Hawaiian Sub-Report 2022 Point In Time Count*, Dec. 6 2022.

⁵ Pub. L. 103-150 (1993), 107 Stat. 1510 “Apology Resolution.”

⁶ “If we are ever to have peace and annexation the first thing to do is to obliterate the past,” stated by Samuel Mills Damon, Vice President of the Provisional Government and Executive Council for the Republic of Hawai‘i, Council of State (Provisional Government of the Hawaiian Islands, 1895). 26 November 1895. Hawaii State Archives Series 424 Vol. 4.

⁷ Pub. L. 86-3, 73 Stat. 4; Hawai‘i Admissions Act of 1959.

⁸ Id. at §5(f).

⁹ Haw. Stat. Con. Art. XII, Section 4-7 (1978).

¹⁰ Haw. Rev. Stat. §10.

¹¹ Haw. Rev. Stat. §10H-1.



HB364
RELATING TO THE LAND USE COMMISSION
Senate Committee on Water and Land

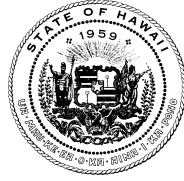
Despite the intractable traverse that far-too-many Native Hawaiians must endure, which is most evident in the diasporic conditions¹² that have priced out Native Hawaiians from their homelands,¹³ or in the myriad of onerous health disparities faced by Native Hawaiians still hanging on for survival in these islands,¹⁴ this State will occasionally invoke policies and proposals that undermine its extra duty of care to the Native Hawaiian people. OHA asks the Legislature, as it has done many times before, to recognize and uphold its extra duty of care for the betterment of conditions of Native Hawaiians.

OHA appreciates the opportunity to express its concerns regarding basic civil rights and constitutional protections for Native Hawaiians and asks that the Legislature **DEFER** HB364. In the event that the Legislature believes that this measure should pass, OHA asks that its recommendation be implemented in order to mitigate our concerns. Mahalo nui loa.

¹² “Hawai‘i has rapidly transformed economically, socially, and politically, creating a place that is unable to support a thriving Native Hawaiian community. This has resulted in a Native Hawaiian diaspora as individuals and families move away from the islands in search of economic and educational opportunities. This diaspora presents a modern challenge to Native Hawaiian identity and culture, bringing separation of people from each other, from the land, and from the ancestral home,” Ciera Pagud, Shawn Kana ‘iaupuni, Wendy Kekahio, *Eia Hawai‘i, he Moku: Exploring Native Hawaiian Migration Patterns Past to Present*, Dec. 2022, p.11.

¹³ “Hawai ‘i’s economic conditions, specifically job availability and career advancement, play a large role in overall [Native Hawaiian out-migration] decisions; More Native Hawaiian participants seek better paying jobs outside of Hawai‘i as a result of struggling financially than non-Hawaiians,” Ciera Pagud, Shawn Kana ‘iaupuni, Wendy Kekahio, *Shifting Sands and Economic Currents Affecting the Decision to Leave Hawai i*, Dec. 2022, p.2.

¹⁴ “Native Hawaiians have a disturbingly higher rate of chronic diseases than many other ethnic groups and the general population in Hawai‘i and the larger U.S. While the leading causes of death are generally the same, the rates of Native Hawaiians afflicted with chronic diseases are greater and occur a decade earlier. These rates are disturbingly three times greater than for the general population of Hawai‘i.” Department of Native Hawaiian Health, John A. Burns School of Medicine, *Assessment and Priorities for the Health and Well-Being in Native Hawaiians and Pacific Islanders*, 2020, p.9.



STATE OF HAWAII
HAWAII STATE PUBLIC LIBRARY SYSTEM
'OIHANA HALE WAIHONA PUKE AUPUNI O KA MOKU'ĀINA O HAWAII
OFFICE OF THE STATE LIBRARIAN
44 MERCHANT STREET
HONOLULU, HAWAII 96813

SENATE COMMITTEE ON WATER AND LAND

Monday, March 13, 2023

1:00 PM

Conference Room 229

**By Stacey A. Aldrich
State Librarian**

H.B. 364 RELATING TO TRESPASS

To: Sen. Lorraine R. Inouye, Chair
Sen. Brandon J.C. Elefante, Vice Chair
Members of the Senate Committee on Water and Land

The Hawaii State Public Library System (HSPLS) **supports** H.B. 364 which clarifies that when trespass involves public land, all state and county law enforcement officers are authorized to and shall enforce trespass laws, without regard to whether the land is owned by the State or by a county. This bill clarifies the jurisdictional issues that can sometimes deter a response by law enforcement.

The HSPLS has 51 branches statewide, and access to the public libraries and facilities is key to carrying out our mission. There are times when access to the buildings, book-drop/pick-up boxes, staff, collections, and programs and services is hindered, and staff need assistance from law enforcement.

Current jurisdictional issues, particularly in the area near the Hawaii State Library, have resulted in an absence of enforcement and encouraged the continued encampment of houseless to live along the Likelike Mall entrance to Iolani Palace. Having individuals living along the Likelike Mall is dangerous and impacts the public's ability to access State property safely. We hope that this measure will help provide some resolution to this continuing problem.

Thank you for the opportunity to provide testimony on H.B. 364.

HB-364

Submitted on: 3/12/2023 1:40:45 AM

Testimony for WTL on 3/13/2023 1:00:00 PM

Submitted By	Organization	Testifier Position	Testify
Michael Golojuch Jr	Individual	Comments	Remotely Via Zoom

Comments:

Aloha Senators

I have concerns about giving County police officers more powers without requiring further training.

Mahalo,

Michael Golojuch Jr.