

STATE OF HAWAI‘I
OFFICE OF THE PUBLIC DEFENDER

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**Testimony of the Office of the Public Defender,
State of Hawai‘i to the Senate Committee on Judiciary**

March 11, 2020

S.B. No. 2633, S.D.1: RELATING TO THE PENAL CODE

Chair Lee, Vice Chair San Buenaventura, and Members of the Committee:

The Office of the Public Defender respectfully opposes S.B. No. 2633, S.D.1.

This measure is yet another attempt to criminalize poverty and homelessness. Most individuals targeted by this measure are not on the sidewalks by choice. They simply have nowhere else to go, especially since many of the parks and beaches are closed to the public at night. Many are unemployed, suffering from alcohol or drug abuse, or mentally ill. Some are employed but cannot afford to pay rent given the current housing prices. These are problems which our community must come to terms with. Before we criminalize attaching objects to buildings or fences, we as a society must provide alternative housing for these individuals. They should not be placed in jail (for up to thirty days on a second or subsequent offense) or be assessed fines which they obviously have no means to pay.

Although the proposed sanction for the first offense is a violation (and thus does not result in the arrest and booking of the alleged offender), many of those cited will likely not appear in court, and thus warrants for their arrest will be issued. These individuals will then need to be arrested, booked and brought to court at substantial expense for a simple violation.

And once these offenders are issued citations, what becomes of the “object” attached to a gate, fence or wall? Once the police or owner of the gate, fence or wall detaches the object, the object will not only remain at the location but the object will be unsecured. The purpose of attaching tents or “objects” to a fence, gate or a wall is simple -- to stabilize and secure the “object” from collapsing and/or being blown away. “Objects” that need to be secured cannot be anchored to a concrete sidewalk; they need to be secured to a stable structure -- whether it may be a pole, wall, fence, or gate. A detached or unsecured tent or tarp will collapse or get caught in the wind. Thus, there is a substantial risk that a detached unsecured object might cause severe injuries and/or significant property damage.

If the offenders are arrested on a subsequent offense, what are the police to do with the “object,” which would likely be a tent or tarp? What are the police to do with the property within the tent or under the tarp? The police cannot simply leave the detached “object” or the other personal property at the scene of the crime/arrest. Moreover, the detached “object” is evidence; thus, the “object” must be collected by the police. After an arrest, the police will have to collect and store the “object” and the personal property.

The S.D.1 includes a definition for “object”. The definition includes “signage, and any communication that falls under the definition of advertisement in section 11-302.” Thus, individuals placing posters, handbills, and campaign signs without permission of the owner would be subject to these penalties.

An owner who gives permission to a political candidate to “attach” a campaign sign will likely want the sign to be removed once the election is over. In fact, there is likely an agreement -- whether it is expressed or implied -- that the sign is to be removed after the election. If the law is to be equally applied, the police will have to cite/arrest political campaigners for failing to remove a sign if that was the agreement made with the owner.

For these reasons we oppose passage of S.B. No. 2633, S.D.1. Thank you for the opportunity to comment on this bill.