

Testimony of the
Office of the Public Defender, to
The House Committee on Judiciary

February 3, 2009

Re: H.B. No. 74: Relating to Disorderly Conduct

Rep. Karamatsu and Members of the Committee:

The Office of the Public Defender has reviewed the above-entitled legislation and is opposed to the proposed change to our current Disorderly Conduct statute, Hawaii Revised Statutes (HRS) §711-1101. The change proposed in this bill would make it a crime to lay across a bench at a bus stop or sleep on the ground within or bordering a bus stop if such action got in the way of use or access to the bus stop.

In addition to proposing this specific change in the statute, this bill also proposes a general change which would affect all the delineated types of disorderly conduct included in our law. This is the new proposed Section 3 which would create a “prima facie” offense if the behavior continues for an as yet unspecified number of minutes.

In other words, it appears that someone could come to a bus stop intending to wait for the bus but find someone sleeping on the bench or on the ground next to the bus stop and feel that his or her “use” or “access” to the bus stop was impeded by the sleeping person. The person who felt they were being inconvenienced could summon a police officer before or after the requisite number of minutes had passed, and the individual sleeping at the bus stop would be “prima facie” guilty of a violation, punishable by a fine and/or community service hours. In other words, the sleeping person would be guilty of a violation before they were even awakened and told to move on. If the person refused to get up & move, i.e. “persisted” in the conduct, the person would be charged with a petty misdemeanor and subject to arrest.

While we understand the sometimes long-standing problems that users of bus stops experience when other persons use the bus stop for shelter overnight or during the day, we do not believe this legislation can be the answer to that problem.

Our nation and our state are in the grip of an economic recession. People are losing jobs, homes, cars, even families. Our homeless shelters are being taxed beyond capacity. Every social service agency is seeing a higher demand for their services at the same time that their budgets are getting smaller.

That is the reality of our current economy. This is not the time to respond with laws that will further drive the very people who need our community’s help from shelter from the rain in a lighted place where they may be less likely to be the victim of crime to some more rural part of each island where they will have less access to the social services still able to assist them.

It should also be noted that some of the people that will come under the application of this new law have serious mental health problems. These are the “marginal” folks, not dangerous, and therefore, not subject to our voluntary commitment law, but who have a mental or emotional illness that afflicts their daily lives.

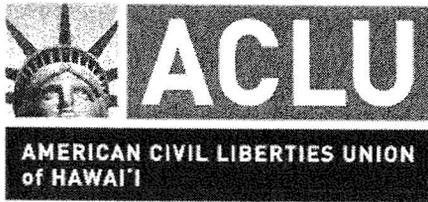
If found sleeping at a bus stop for fill in the blank minutes, the person will be awakened, issued a citation for the violation, and told to move on. If the person does move on, they will have to answer the violation in court. What are the chances of that person appearing in court at the designated time and place? If they do not, they are in contempt of court. Now, growing out of the violation of sleeping at a bus stop they face a misdemeanor charge of Criminal Contempt of Court under HRS §710-1077(1)(g), “knowingly resists the process ... of a court”.

Do taxpayers want to pay to incarcerate someone whose crime began with sleeping at a bus stop? Do taxpayers want to pay for the mental health evaluation of such persons, i.e. persons who did not engage in any overt criminal conduct, but simply used a bus stop as shelter in a way that interfered with another person’s convenience at the bus stop?

It is important to remember that this proposed law refers to LAYING ON A BENCH OR SLEEPING ON THE GROUND BY A BUS STOP. This bill does not address persons who threaten or harass legitimate users of the bus stop as we already have statutes in our law to deal with that offensive conduct.

This bill is not the solution we need to the problem that gives rise to its proposal. We believe its passage would indeed create more problems than it would solve. We do not support its passage.

Thank you for the opportunity to submit testimony on this legislation.



VIA EMAIL: JUDtestimony@Capitol.hawaii.gov

Committee: Committee on Judiciary
Hearing Date/Time: Tuesday, February 3, 2009, 2:00 p.m.
Place: State Capitol, Conference Room 325
Re: Testimony of the ACLU of Hawaii in Opposition to H.B. 74, Relating to Disorderly Conduct

Dear Chair Karamatsu and members of the Committee on Judiciary:

The American Civil Liberties Union of Hawaii (“ACLU of Hawaii”) writes in opposition to H.B. 74. In addition to being bad public policy, this bill is fraught with constitutional deficiencies and is likely to invite legal challenges.

First, H.B. 74 reflects a poor public policy decision in that it targets homeless individuals but fails to address the underlying causes of homelessness. Making homelessness a crime will only exacerbate the problem: punitive actions like H.B. 74 only make the lives of homeless individuals more difficult by moving them away from services, turning them into criminals (just for engaging in life-sustaining activities in public), and giving them a criminal record. Each of these consequences will make it more difficult for homeless individuals to obtain employment and housing. Rather than passing punitive measures like H.B. 74, this Committee should look at constructive alternatives to combating the underlying causes of homelessness.

Second, this bill is unconstitutionally vague. It cannot meet either prong of the void-for-vagueness doctrine, which requires that a penal statute define the criminal offense (1) with sufficient definiteness that ordinary people can understand what conduct is prohibited and (2) sufficiently so as not to encourage arbitrary and discriminatory enforcement. *Kolender v. Lawson*, 461 U.S. 352, 357 (1983). This bill cannot meet the first requirement insofar as a number of innocuous activities would be banned by the ordinance’s prohibitions. For example, under the plain language of this bill, an infant or child asleep on a bus stop bench and an elderly person who dozes off on the sidewalk while waiting for a bus would all be violating this law. Furthermore, the bill proposes to ban such activities at all times of the day and night — even when the buses are not running. An ordinary person reading the bill may not understand that these activities were unlawful.

Even more problematic, however, is that the bill cannot satisfy the second prong of the vagueness doctrine because its enforcement mechanism invites selective enforcement. The

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Chair Karamatsu, Committee on Judiciary
and Members Thereof
February 3, 2009
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vagueness of the bill allows a police officer too much discretion in determining whether someone is, in fact, violating the law. Indeed, the Honolulu Police Department (“HPD”) testified against a similar proposed ordinance (Bill 35) just several months ago. Specifically, HPD testified that it opposed the bill because it would be difficult to enforce (*See* Testimony of Robert J. Green, Major, District 7 (May 15, 2008)). Therefore, should this bill pass, law enforcement officers would be left with two unsatisfactory options – enforce the bill selectively (and in an unconstitutional manner) or refuse to enforce the bill at all.

Notably, the City and County of Honolulu deferred Bill 35 due in large part to its enforcement problems. Given the similarity of H.B. 74 to Bill 35, it is reasonable to presume that the same enforcement issues will arise should the bill become law. Thus, the ACLU respectfully requests that this Committee decline to pass this bill and instead consider constructive alternatives to combating homelessness.

The mission of the ACLU of Hawaii is to protect the fundamental freedoms enshrined in the U.S. and State Constitutions. The ACLU of Hawaii fulfills this through legislative, litigation, and public education programs statewide. The ACLU of Hawaii is a non-partisan and private non-profit organization that provides its services at no cost to the public and does not accept government funds. The ACLU of Hawaii has been serving Hawaii for over 40 years.

Thank you for this opportunity to testify.

Sincerely,

Laurie A. Temple
Staff Attorney
ACLU of Hawaii

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Strong Support for HB74
Relating to Disorderly Conduct
Tuesday, February 3, 2009
2:00 pm

To: Rep. Jon Riki Karamatsu, Chair, and Members,
House Committee on Judiciary

Dear Chair Karamatsu, Vice Chair Ito, and Members:

Bus stops, with benches and some with roof and/or side shelters were made for the exclusive use as a place for bus riders to wait for their bus. The most any person should have to occupy any one of these shelters is about 59 minutes (if the bus runs only once an hour). The wait is much less for most routes.

Many of these bus stops have been taken over as temporary or even permanent homeless shelters. I get so sad and so angry when I see seniors, some even with canes, and disabled bus riders having to stand while a young drug/booze addled individual lays on the bench. Sometimes I ask the vagrants to move but most seniors are too afraid to ask them to move. Quite frankly I usually am too. Just when did the city/state start allowing these bus stops to become temporary/permanent homeless shelters? When they got kicked out of the parks? They refuse to go to shelters. So stop making them my problem. Return the bus stops and benches to the bus riders as they are intended to be used.

Perhaps bus drivers should have the right/duty to call 911 when they see someone laying on a bench prohibiting the use of the bus stop/bench. This would be a much faster way to report the problem vs. people who are afraid to call the police. And they see all the bus stops every day.

In any case, the abuse must stop. Bus riders need those stops/benches/toad stools, etc. Soon the vagrants will learn how to steal a board and lay it across several toad stools to make a bed thus taking these toad stools from bus riders.

And also ban shopping carts from bus stop areas.

Thank you for the opportunity to testify.

Mahalo

Ann Ruby
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