

**Testimony of the Office of the Public Defender
State of Hawaii
to the House Committee on Judiciary**

March 23, 2009

S.B. No. 1263, S.D. 2, H.D 1: RELATING TO TATTOO ARTISTS

Chair Karamatsu and Members of the Committee:

The Office of the Public Defender takes no position on the policy questions raised by the proposed regulatory changes offered in this legislation. However, we see a number of serious problems with the proposed criminal offense created in this bill.

This bill would make it a “violation” to be arrested or convicted “for any violation for substance abuse or trafficking of illegal substances”. (Ref: p. 6, line 20 and p. 7, lines 5-7). In our penal code, there is no such crime as “substance abuse”, therefore, no one could be arrested for violation of it. Under Chapter 712, persons can be arrested for possession of illegal substances and trafficking of specified illegal substances and, under Chapter 329, persons can be arrested for possession of drug paraphernalia.

In addition to the problem that the language in the proposed S.D. 2, H.D. 1 references an offense that doesn’t exist, we object to anyone being held to have “violated” this newly created law on the mere basis that the person was arrested for a crime. An arrest is not the same thing as a conviction and should not be treated the same. Indeed, innocent persons are arrested for crimes they did not commit. There would be constitutional implications if an arrest were to be treated equally to a conviction.

We also object to the newly created misdemeanor offense which is so vaguely defined that it probably wouldn’t pass constitutional muster. (Ref: p. 9, lines 16-20). The new language seeks to make a person guilty of a misdemeanor if the person “knowingly or willfully makes a false statement to the department relating to any requirement of this part”. First, it is not clear what “this part” refers to. Secondly, it would appear that if a person did not report an arrest (as described above), the person would be guilty of a misdemeanor, even if the person was ultimately acquitted of the underlying criminal charge. Such a result does not make sense.

Finally, the proposed fine for the misdemeanor offense is out of whack with the structure of our penal code. HRS § 706-640 establishes the fines for the gradation of offenses found in our penal code; subsection (d) sets the maximum fine for a misdemeanor offense at \$2000. It is poor policy to create a different fine for this newly created offense when offenses such as Assault in the Third Degree, Terroristic Threatening in the Second Degree, i.e. offenses that involve actual harm or threatened harm to a person, are capped at \$2000. fines.

Based upon the concerns noted above, we oppose passage of this bill in its current form. Thank for the opportunity to comment on this measure.