

HB2129

HD1

**Testimony of the Office of the Public Defender
to the Senate Committee on Judiciary and Government Operations**

March 16, 2010

H.B. No. 2129 HD1: RELATING TO GRAFFITI

Chair Taniguchi and Committee Members:

We oppose passage of H.B. No. 2129 HD1 because it would hold one criminally liable for acts that the person was not responsible for. This bill would automatically impose upon a person who was convicted of certain specified criminal offenses involving graffiti the duties of: 1) removing any graffiti which appears on properties within one hundred yards of the site of the original offense for a period of time not exceed the maximum period allowed for the offense charged; and 2) reimbursing property owners within one hundred yards of the site of the original offense for the costs of the removal of any graffiti which appears for for a period of time not exceed the maximum period allowed for the offense charged. The bill would impose the aforementioned penalties even if the original offender was not involved with the latter incidents of graffiti.

For example, if a person is convicted of H.R.S. 708-821, Criminal Property Damage 2°, one of the offenses specified in this bill. Because the offense is a class C felony, a person would be responsible for graffiti removal for five years on properties within 100 yards of the site of his/her graffiti conviction, even if he/she had nothing to do with defacing the properties.

This bill is completely contrary to the fundamental legal concept in both criminal and tort law that you are legally liable only for those acts for which you bear responsibility. This measure would be analogous to requiring a driver convicted of speeding to pay the fines of all speeders caught within a hundred yards of the original driver's site of offense for a specified period of time after his/her conviction.

Finally, the provision which would require graffiti offenders to remove the graffiti involved within thirty days of sentencing has good intentions but might be problematic. In the past, the community service branch of the Judiciary which supervises such projects has been backlogged and unable to expediently schedule community service projects. It would be unfair to hold the offender liable for administrative delays. The proper authorities must supervise graffiti removal projects. One cannot simply enter a citizen's or company's property to conduct cleaning or painting without the proper legal clearances.

Thank you for the opportunity to be heard on this matter.

Testimony before the Senate Committee on Judiciary and Government Operations

By Stephen Chu
Supervisor Facilities Operations
Hawaiian Electric Company, Inc.

March 16, 2010
2:00 p.m.
House Bill 2129 HD1
Relating to Graffiti

Chair Taniguchi, Vice Chair Takamine, and Members of the Committee:

My name is Stephen Chu and I am testifying on behalf of the Hawaiian Electric Company and its subsidiaries, Hawaii Electric Light Company and Maui Electric Company.

We strongly **support** HB 2129 HD1, which will make those convicted of graffiti damage more accountable for their actions. However, there may be cases in which the damaged property involves an electrical vault, steel pole, or other equipment belonging to Hawaiian Electric which may be located on land (real property) belonging to Hawaiian Electric or a third party.

Much of our equipment is energized at high voltage levels in which there is a possible risk that serious injuries may occur if removal of graffiti from any Hawaiian Electric equipment is not handled in an appropriate and safe manner by trained and qualified personnel. Accordingly, in the interest of ensuring the public's safety, we propose to amend subsection (a), lines 9 through 10, by adding the underscored text as indicated below:

"§ 708-____ Graffiti; sentencing. (1) Whenever a person is sentenced under sections 708-821, 708-822, 708-823, or 708-823.5, for an offense in which the damage is caused by graffiti, in addition to any penalty prescribed by those sections, the person shall be required to:

- (a) Remove the graffiti from the damaged property where consent from the respective property owner(s) have been obtained, within thirty days of sentencing, if it has not already been removed;

Based on the foregoing, we ask that our proposed amendment be included in House Bill 2129 HD1.

Mahalo.