

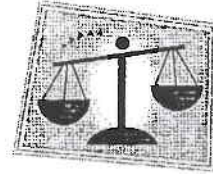


## Office of the Public Defender State of Hawaii

**Timothy Ho, Chief Deputy Public Defender**

Testimony of the Office of the Public Defender,  
State of Hawaii to the Senate Committee on Judiciary and Labor

**LATE TESTIMONY**



March 16, 2011, 10:00 a.m.

RE: **H.B. 555**, HD1: Relating To Graffiti

Chair Hee and Members of the Committee:

Last year, we **opposed** the passage of Act 99 for the following reasons:

First, by sentencing the defendant to remove graffiti made by others for a two year period imposes a strict liability for the conduct of another person. This law 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.

Second, the provision which requires graffiti offenders to remove the graffiti involved within thirty days of sentencing has good intentions but is problematic. The community service branch of the Judiciary which supervises such projects is often backlogged and unable to expediently schedule community service projects. It is unfair to hold the offender liable for administrative delays.

Third, we believe that the responsibility to clean the area for two years after sentencing extends beyond the court's legal jurisdiction over a misdemeanor and petty misdemeanor defendant, which is one year, and six months, respectively.

Finally, we have always believed that to require, without exception, the removal of graffiti in the exact area that the defendant committed his act could expose the defendant and/or his supervisors to bodily injury or death. Therefore, while we do not agree with this law, we support the changes that are proposed in this measure, as this is what we had proposed during last year's legislative session.

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



*THE JUDICIARY, STATE OF HAWAII*

**Testimony to the Senate Committee on Judiciary and Labor**

Senator Clayton Hee, Chair

Senator Maile Shimbukuro, Vice Chair

Wednesday, March 16, 2011, 10:00 a.m.

State Capitol, Conference Room 016

by

Janice Yamada

Deputy Chief Court Administrator, First Circuit

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**Bill No. and Title:** House Bill No. 555, H.D. 1, Relating to Graffiti

**Purpose:** This bill will limit the imposition of the penalty of removal of graffiti to cases where the removal would not endanger people or inconvenience the public. It also increases the area within which graffiti removal may take place.

**Judiciary's Position:**

The Judiciary supports the concept of graffiti eradication, which is an important aspect of restorative justice. However, we have serious concerns with Section 708-823.6 of the Hawaii Revised Statutes, which, as written, is not practical and cannot be complied with to ensure the proper enforcement and supervision of graffiti removal.

As currently written, Section 708-823.6 is not clear as to whose responsibility it is to oversee an offender who is ordered to remove graffiti from damaged property within 30 days of sentencing. In the Judiciary, First Circuit (Oahu), the Adult/Juvenile Community Service and Restitution Unit (A/JCSRU) is responsible for administering a county-wide community service program, which allows an offender an opportunity to be held accountable for his/her actions. The A/JCSRU has had difficulty recruiting community service agencies to oversee offenders sentenced to perform graffiti removal as someone needs to locate the graffiti and then supervise the offender during the length of time necessary for the eradication. In addition, A/JCSRU does not have sufficient personnel, resources or supplies for graffiti removal, nor are staff authorized to supervise offenders to clean up graffiti. Also, it is unclear as to whose responsibility it would



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be to monitor an offender for two years to have him/her remove graffiti from a specified area and who would be measuring off the extent of the specified area.

On the neighbor islands, the Intake Service Center, which is under the Department of Public Safety (PSD), has been administering the community service sentencing program. However, in early 2010, PSD informed the Judiciary that it did not have the resources to continue to administer the community service sentencing program intake functions in the Second, Third, and Fifth Circuits (Maui, Hawaii, and Kauai, respectively), and asked the Judiciary to assume these functions. As such, PSD has already discontinued this function in the Second Circuit. While the Judiciary is currently seeking funding for positions from the Legislature to implement community service sentencing programs in each of these circuits, these positions are not to supervise offenders ordered to perform graffiti eradication.

Contact was made with the State Highway Maintenance Base Yard to determine whether they have a graffiti eradication program and, if so, could supervise offenders convicted under the current law. Their response was that they are trying to establish a voluntary graffiti eradication program, but they do not have anyone to supervise our offenders.

For the reasons noted above, the Judiciary respectfully offers the following revision to Section 708-823.6, attached as a proposed Senate Draft 1. The amendment offered in the proposed Senate Draft 1 adds a new subsection (3) to House Bill No. 555, H.D. 1, which reads as follows:

“(3) The court may require the person, in lieu of performing graffiti removal, to perform one hundred hours of alternative community service if the supervising governmental entity lacks the necessary resources to ensure the person’s compliance with the requirements of subsection (1).”

The Judiciary believes that this restructuring of the statute will make the law more manageable, and allow the Judiciary to implement the law so that it can be enforced.

Thank you for the opportunity to comment on this measure.

**Report Title:**

Graffiti; Sentencing

**Description:**

Establishes alternative community service requirement for person convicted of criminal property damage by graffiti.

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## A BILL FOR AN ACT

RELATING TO GRAFFITI.

**BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF HAWAII:**

1           SECTION 1. Section 708-823.6, Hawaii Revised Statutes, is  
2 amended to read as follows:

3           "~~{}~~§708-823.6~~{}~~ **Graffiti; sentencing.** (1) Whenever a  
4 person is sentenced under section 708-821, 708-822, 708-823, or  
5 708-823.5, for an offense in which the damage is caused by  
6 graffiti, in addition to any penalty prescribed by those  
7 sections, the person shall be required to:

8           (a) Remove the graffiti from the damaged property within  
9 thirty days of sentencing, if it has not already been  
10 removed and where consent from the respective property  
11 owner or owners has been obtained; and

12           (b) For a period of time not to exceed two years from the  
13 date of sentencing, along with any other person or  
14 persons who may be sentenced under this section for  
15 the same property, perform community service removing,  
16 within fourteen days, any graffiti applied to other  
17 property within ~~[one]~~ two hundred and fifty yards of  
18 the site of the offense for which the person was

1           sentenced, where consent from the respective property  
2           owner or owners has been obtained, even if the  
3           property was damaged by another person[-];  
4 provided that removal of graffiti shall not place the person or  
5 others in physical danger nor inconvenience the public.

6           (2) For purposes of this section, "graffiti" means any  
7 unauthorized drawing, inscription, figure, or mark of any type  
8 intentionally created by paint, ink, chalk, dye, or similar  
9 substances.

10          (3) The court may require the person, in lieu of  
11 performing graffiti removal, to perform one hundred hours of  
12 alternative community service if the supervising governmental  
13 entity lacks the necessary resources to ensure the person's  
14 compliance with the requirements of subsection (1)."

15          SECTION 2. Statutory material to be repealed is bracketed  
16 and stricken. New statutory material is underscored.

17          SECTION 3. This Act shall take effect upon its approval.