

Honolulu, Hawaii

MAR 25 2013

RE: H.B. No. 31
H.D. 1
S.D. 1

Honorable Donna Mercado Kim
President of the Senate
Twenty-Seventh State Legislature
Regular Session of 2013
State of Hawaii

Madam:

Your Committee on Judiciary and Labor, to which was referred H.B. No. 31, H.D. 1, entitled:

"A BILL FOR AN ACT RELATING TO DISORDERLY CONDUCT,"

begs leave to report as follows:

The purpose and intent of this measure is to:

- (1) Add under the offense of disorderly conduct under section 711-1101, Hawaii Revised Statutes, the act of impeding or obstructing bus stop use or access by laying on a bus stop bench or across more than two seats, or sleeping on the ground within or abutting a bus stop, with the intent to alarm or cause physical inconvenience to the public; and
- (2) Establish that engaging in disorderly conduct at a bus stop for at least sixty minutes is prima facie evidence of recklessly creating a risk of physical inconvenience to a member or members of the public.

Your Committee received testimony in support of this measure from the Department of Transportation Services, City and County of Honolulu; and Downtown Neighborhood Board No. 13. Testimony in opposition to this measure was submitted by the Office of the Public Defender and one individual.



Your Committee finds that individuals who impede or obstruct bus stops create a potential hazard for disabled bus patrons and interfere with the loading and unloading of bus passengers. This type of conduct can be unpleasant or even intimidating to residents and visitors who travel by bus. This measure recognizes the physical inconvenience that this type of conduct causes and provides law enforcement officers further mechanisms of enforcement to remove an individual engaging in such conduct from bus stop areas.

Your Committee recognizes the concerns raised in the written testimony submitted by the Office of the Public Defender that the act of sleeping at or near a bus stop is not conduct or behavior that is inherently bad or unacceptable. The Office testified that under section 711-1101, Hawaii Revised Statutes, the offense of disorderly conduct involves the act of bad conduct or behavior that includes fighting, threatening, violent or tumultuous behavior, unreasonable noise, offensively coarse behavior, or abusive language, to name a few actions. The act of sleeping at or impeding access to a bus stop does not appear to align with the types of disorderly conduct specified under section 711-1101, Hawaii Revised Statutes.

Furthermore, the Office of the Public Defender raised concerns that this measure would be criminalizing homelessness, as a person sleeping at a bus stop may have refused accommodations at a shelter and may have chosen to remain on the street for various reasons. While your Committee recognizes the problems that individuals who impede access to or sleep at bus stops cause, homelessness is not and should not be a crime.

Furthermore, your Committee notes that section 711-1101(3), Hawaii Revised Statutes, establishes that disorderly conduct is a petty misdemeanor if it is the defendant's intention to cause substantial harm or serious inconvenience, or if the defendant persists in disorderly conduct after reasonable warning or request to desist; otherwise, disorderly conduct is a violation. Your Committee further finds that this subsection applies to the act of impeding access to or sleeping at a bus stop.

Accordingly, your Committee has amended this measure by:

- (1) Deleting language that makes it an offense of disorderly conduct to impede or obstruct bus stop use or access by



laying on a bus stop bench or sleeping on the ground within or abutting a stop;

- (2) Deleting language which establishes that engaging in disorderly conduct at a bus stop for at least sixty minutes is prima facie evidence of recklessly creating a risk of physical inconvenience;
- (3) Inserting an effective date of July 1, 2050, to encourage further discussion; and
- (4) Making technical, nonsubstantive amendments for the purposes of clarity and consistency.

As affirmed by the record of votes of the members of your Committee on Judiciary and Labor that is attached to this report, your Committee is in accord with the intent and purpose of H.B. No. 31, H.D. 1, as amended herein, and recommends that it pass Second Reading in the form attached hereto as H.B. No. 31, H.D. 1, S.D. 1, and be placed on the calendar for Third Reading.

Respectfully submitted on
behalf of the members of the
Committee on Judiciary and
Labor,



CLAYTON HEE, Chair



