



**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**

March 18, 2013, 10:00 a.m.

H.B. No. 31, H.D. 1: RELATING TO DISORDERLY CONDUCT

Chair Hee and Members of the Committee:

This measure would add a subsection to §711-1101 of the Hawaii Revised Statutes, making sleeping at or near a bus stop shelter a petty misdemeanor offense of disorderly conduct. The Office of the Public Defender opposes H. B. 31, H.D. 1.

The offense of disorderly conduct involves the proscription of bad conduct or behavior. The behavior described in the statute includes fighting, threatening, tumultuous behavior, offensively coarse behavior, and unreasonable noise, to name a few. The conduct that is being proscribed in this measure is sleeping at or near a bus stop, which is not conduct or behavior that is inherently bad or unacceptable.

Enforcement of this measure will be a problem. How do you differentiate between someone who fell asleep waiting for the bus and someone who is homeless and sleeping at the bus shelter? This measure prohibits sleeping on the ground at or near a bus stop or shelter. What happens if the person is sleeping on a cot, or beach chair, or if a group of people, living at the bus shelter, take turns sleeping and looking out for police officers?

While it is true that people sleeping at or near bus stops cause inconvenience to the public, criminalizing such behavior is not the answer. Have you ever heard anyone describe homelessness as a crime? Homelessness is not and should not be a crime. We have to look at solutions and answers to the homeless situation, which would in turn solve the problem of people living at or near bus stops.

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

DEPARTMENT OF TRANSPORTATION SERVICES  
CITY AND COUNTY OF HONOLULU

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March 14, 2013

The Honorable Clayton Hee, Chair  
and Members  
Senate Committee on Judiciary and Labor  
Hawaii State Capitol  
415 South Beretania Street, Room 407  
Honolulu, Hawaii 96813

Dear Chair Hee and Committee Members:

Subject: House Bill 31, HD 1, Relating to Disorderly Conduct

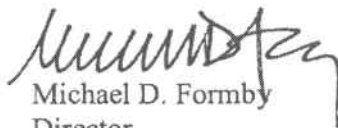
The Department of Transportation Services (DTS) appreciates the efforts of your Committee to promote safety and accessibility at bus stops.

DTS supports HB 31, HD1, to the extent that it makes it a disorderly conduct offense to impede or obstruct bus stop use or access by lying on a bus stop bench or across more than two seats, or sleeping on the ground within or abutting a bus stop.

Bus stops are constructed and maintained by DTS for the exclusive use of bus patrons. Individuals impeding or obstructing bus stops create a potential hazard for disabled bus patrons and interfere with the loading and unloading of passengers.

DTS regularly receives complaints from the transiting public regarding their inability to access bus stops as a result of individuals inappropriately denying others the use of the bus stop. Many patrons complain that they have to stand 20 to 40 feet away from the bus stop and risk being passed by the bus for failing to stand near the bus stop. This bill will provide enforcement officers the authority to cite those whose conduct obstructs the intended purpose of bus stops.

Very truly yours,

  
Michael D. Formby  
Director



**DOWNTOWN NEIGHBORHOOD BOARD NO. 13**

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**Testimony of  
Thomas Smyth, Board Member**

**Before the  
Committee on Judiciary and Labor  
Monday, March 18, 2013, 10:00 am Room 016  
On  
HB 31 HD Relating to Disorderly Conduct**

**Chair Hee, Vice Chair Shimabukuro and Members of the Committee:**

**The Downtown Neighborhood Board strongly supports HB 33 HD1, as amended, that creates the offense of disorderly conduct for a person who lays across more than two seats at a bus stop or sleeps on the ground within a bus stop area if the conduct lasts more than 60 minutes.**

**This type of conduct is especially a problem in the Downtown and Chinatown neighborhoods. It is intimidating to our local residents, workers and visitors who often travel by bus to and from our area. This designation will recognize the physical inconvenience such conduct causes and will provide law enforcement officials with the means of removing the individual from the designated bus stop area.**

**We recognize that there not enough facilities in our neighborhood to accommodate all of those who are considered “homeless”. Ironically many of those individuals who claim that they are homeless will not accept accommodation in the various shelters and other facilities in our area. They have chosen to remain on the street and many, certainly not all, intimidate and inconvenience those who must use a bus stop.**

**Thank you for the opportunity to provide this testimony.**



Kyle Sleppy

JDL- March 18-1000 hours- Conference Room 016

HB31, SD.1

I one hundred percent oppose HB 31, which makes lying across a bench or more than two seats of a bus stop bench or sleeping on the ground within or abutting a bus stop Disorderly Conduct and committing the act for more than 60 minutes or more shall be prima facie evidence or recklessly creating a risk of physical inconvenience to a member or members of the public.

This proposal to amend the current section (711-1101) of Hawaii Revised Statutes is absolutely ridiculous and unneeded. Under this bill in section (1) A person commits the offense of disorderly conduct if, with intent to alarm or cause physical inconvenience to a member or members of the public, or recklessly creating risk thereof, then a list of instances listed (a) through (f). Specifically, (d) states- "Creates a hazardous or physically offensive condition." I ask, what hazardous condition or physically offensive condition is a person sleeping on, or taking up more than two seats of a bus stop bench creating? The answer to that question is none. In (e) it states "Impedes or obstructs, for the purpose of begging or soliciting alms, any person in any public place or in any place open to the public." Might I emphasize the fact that a bus stop is public property. I would also like to point out that if the person is not begging or soliciting alms whilst laying on the bench or taking up more than two seats, nor committing any others offenses of disorderly conduct such as fighting or threatening states in (a), making unreasonable noise stated in (b), subjecting another person to offensively coarse or abusive language that is likely to provoke a violent response stated in (c), that person should not be charged with disorderly conduct, because actions stated in section (f) are not disorderly, do not create hazardous or physically inconvenient or risks of reckless nature. Does sleeping on a bus stop bench, within a bus stop or abutting a bus stop seem like actions that require the label "Disorderly" or within the Disorderly Conduct statute, the word "reckless?" The answer is no, they do not. In 711-1101 Disorderly Conduct, the original and current Disorderly Conduct stature within Hawaii Revised Statutes, in the Commentary On 711-1101 states "The section [Section 711-1101, defined in section one (a) through (e)] requires proof of an intent to cause physical inconvenience or alarm, or at least a reckless creation of a risk thereof" to be committing or have committed the offense of disorderly conduct. 711-1101 also states "A person may not be arrested for disorderly conduct as a result of activity which annoys only the police." This bill is an obvious proposal of amendment to 711-1101 in conjunction with law enforcements dislike of homeless persons around the City and County of Honolulu.

What is also of concern to me is the cost and time associated with the use of police resources that would be used to watch someone committing acts under (f) in Section (1) of 711-1101 in HB31 for 60 minutes. This means a police officer would have to watch the person continuously do such

actions for 60 minutes for there to be prima facie evidence and to then alert the person that of their violation.

Though sleeping on a bus stop bench, taking up more than two seats of a bus stop bench, sleeping within or abutting a bus stop does not create an obstruction of a public highway or public passage; I would like to address 711-1105 of Hawaii Revised Statutes, in Section (1) stating- A person commits the offense of obstructing if, having no legal privilege to do so, the person knowingly or recklessly obstructs any highway or public passage whether alone or with others. I wanted to address this statute because it may come up as a compromise instead of the offense of disorderly conduct, in conjunction with the amendment proposal in (f) of 711-1101 in HB31. I do not want to see even this offense to be used in cases defined in Section (1) (f) of 711-1101 in HB31 if the person were not committing the offense of disorderly conduct under (a) through (e) of Section (1) in the current statute of 711-1101, because they would not be obstructing a public highway or public passage.

The only option that would be left is to find an offense under the City and County of Honolulu Revised Ordinances regarding vagrancy which keep in mind, at the Wahiawa Community Center on Monday, April 18, 2011 at a Wahiawa- Whitmore Village Neighborhood Board no. 26 meeting, under the concern of homelessness addressed in the meeting, HPD noted vagrancy laws were deemed unconstitutional and must be careful when dealing with civil rights, when the suggestion of establishing vagrancy laws was made.

My suggestion is to not pass this bill for lack of legitimate conditions of disorderly conduct as defined in the current Disorderly Conduct Statute of 711-1101, waste of police resources and money, causes no obstructions of the bus pick-up and drop-off of persons and is no legitimate concern to the public or the safety of the public.

Sincerely,

Kyle Sleppy