



## Office of the Public Defender State of Hawai‘i

### Testimony of the Office of the Public Defender, State of Hawai‘i to the House Committee on Judiciary

March 9, 2019

S.B. No. 566, SD1, (SSCR11127): RELATING TO PENAL CODE

Hearing: Monday, March 11, 2019, 2:00 p.m.

Chair Lee, Vice Chair San Benaventura, and Members of the Committee:

The Office of the Public Defender opposes S.B. No. 566, SD1.

This measure is simply another attempt to criminalize poverty and homelessness. Most of individuals targeted by this measure are not on the sidewalks by choice. They simply have nowhere else to go, especially since many of the parks and beaches are closed to the public at night. Many are unemployed, suffering from alcohol or drug abuse, or mentally ill. Some are employed but cannot afford to pay rent given the current housing prices. These are problems which our community must come to terms with. Before we criminalize attaching objects to buildings or fences, we as a society must provide alternative housing for these individuals. They should not be placed in jail (for up to thirty days on a second or subsequent offense) or be assessed fines which they obviously have no means to pay.

Moreover, the reason for attaching tents or structures to a fence, gate or a wall is simple -- to stabilize and secure structures from collapsing and/or being blown away. Structures that need to be secured cannot be anchored to a concrete sidewalk; therefore, they need to be secured to a stable structure -- whether it may be a pole, wall, fence, or gate. Detached or unsecured tents that collapse or get caught in the wind will indeed cause severe injuries and/or significant property damage.

Finally, the term “object” as used in the measure is simply too vague. According to Merriam-Webster Dictionary, “object” is defined as “something material that may be perceived by the senses.” See <https://www.merriam-webster.com/dictionary/object>, last visited February 16, 2019). Thus, individuals placing posters, handbills, campaign signs without the permission of the owner may be subject to criminal penalties.

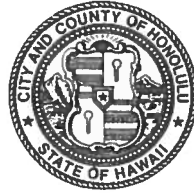
Thank you for the opportunity to comment on S.B. No. 566, SD1.

POLICE DEPARTMENT  
CITY AND COUNTY OF HONOLULU

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**LATE**

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OUR REFERENCE AF-SAI

March 11, 2019

The Honorable Chris Lee, Chair  
and Members  
Committee on Judiciary  
House of Representatives  
Hawaii State Capitol  
415 South Beretania Street, Room 325  
Honolulu, Hawaii 96813

Dear Chair Lee and Members:

SUBJECT: Senate Bill No. 566, S.D. 1, Relating to the Penal Code

I am Acting Major Aaron Farias of District 3 (Aiea/Pearl City/Waipahu) of the Honolulu Police Department (HPD), City and County of Honolulu.

The HPD opposes Senate Bill No. 566, S.D. 1, Relating to the Penal Code.

Senate Bill No. 566 creates a new section under HRS Chapter 708, which essentially criminalizes the chronic nuisance associated with homeless persons attaching objects to adjacent property. This law may be viewed as another means to employ the resources of law enforcement and others in the criminal justice system as the answer to the societal problem of homelessness. In addition, HPD officers will spend an inordinate amount of time to investigate and detach, and will be liable for the removal of objects on private property.

The HPD respectfully opposes Senate Bill No. 566, S.D. 1, Relating to the Penal Code.

Thank you for the opportunity to testify.

Sincerely,

Handwritten signature of Aaron Farias in black ink.

for: Aaron Farias, Acting Major  
District 3

APPROVED:

Handwritten signature of Susan Ballard in black ink.  
Susan Ballard  
Chief of Police

March 10, 2019

**TO: Chair Chris Lee, Vice Chair Joy San Buenaventura and Members of the House Committee on the Judiciary**

**FROM: Barbara Polk**

**Testimony in Opposition to SB566 Relating to the Penal Code**

As a member of the Hawaii Justice Coalition, I strongly oppose the creation of yet another law that will have an adverse impact on homeless people, continue to crowd jails and the judiciary, and waste police time with minor matters.

Since this bill was not referred to the money committees of either house, despite having obvious cost implications, I urge this committee to consider the costs of enforcement and the tradeoffs of other more important matters in the state, including housing, education and climate change mitigation.

Do you want police to spend their time taking down tents, brochures, etc. that are attached to the walls of private property, rather than dealing with more serious crimes? I note that the police department opposes this bill, and I am sure that officers did not join the force to spend their time on such minor matters.

Our courts are overcrowded—do you want to increase the workload of the courts dealing with these matters, thereby delaying other trials and hearings?

Have you considered the costs of an arrest and incarceration for even a brief time? I learned last year that when a person is arrested, before going to jail, the police take any individual who has prescription drugs to a hospital for evaluation and replacement of the prescription, a major cost in time and money.

And finally, what happens to individual who cannot pay fine? Are they incarcerated?

Baz Dreisinger in her book *Incarceration Nations* suggests that we should distinguish between those people we are afraid of and those we are mad at. Just because we don't like a behavior does not mean we need to spend scarce resources of time and money to stop it.

Thank you for reading this testimony. Please defer SB566