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Unity, Equality, Aloha for all



To: SENATE COMMITTEE ON HAWAIIAN AFFAIRS

For hearing Tuesday, February 16, 2021

Re: SB 1246 RELATING TO THE LAW OF THE SPLINTERED PADDLE.

Prohibits a county from enacting any ordinance that prohibits a person from lying by the roadside in safety in accordance with the law of the splintered paddle.

TESTIMONY IN OPPOSITION

(BUT STRONGLY FAVORABLE IF AMENDED IN TWO WAYS)

The Law of the Splintered Paddle is a great treasure of Hawaiian history, culture, and language. In many ways it marked the creation of Hawaii's legal system. It began the transformation of Hawaiian culture from a dictatorial "rule of men" where powerful leaders created law merely by giving voice ad hoc to their arbitrary whims of the moment, toward a "rule of law" where enduring principles were codified to be applied long-term to all members of a society. The Law of the Splintered Paddle was, of course, enacted orally by Kamehameha speaking it in Hawaiian language; but in modern times we write our

laws, especially when they are the focus of legislation. Furthermore, Hawaiian language is a great treasure and considerable effort is being made to revive it and help it flourish in everyday use. Therefore:

PROPOSED AMENDMENT #1: The Law of the Splintered Paddle should be highlighted in this bill with precise language in written form (not merely a vague explanation), in our two official languages Hawaiian and English, and enclosed in a decorative box or display. Take time to look for original sources from the earliest possible date when a reliable story-teller wrote it down himself or told the story to a reliable scholar who wrote it down; for example Kamakau, Malo, Andrews, Laiana (Lorenzo Lyons); and cite the source(s).

This bill unfortunately would allow homeless squatters to erect tents on sidewalks, unintentionally but effectively endangering pedestrians who are forced to step into street traffic to go around them; and of course protesters would intentionally abuse this law by citing it as a defense against being removed when they intentionally block sidewalks to get publicity for their cause. Such misbehavior would be allowed under terms of this bill as written, because sidewalks are "by the roadside." I recall seeing that happen on the sidewalk along Beretania bordering Thomas Square several years ago during a year-long "Occupy" [or "de-occupy"] protest that copied a nationwide anti-capitalist protest by the same name. Protesters (sometimes many of them) pitched tents on the sidewalk including sleeping bags and even camp stoves and rudimentary toilets allowing themselves to spend days, nights, and weeks in residence there. The Mayor eventually placed large cement flowerpots on the sidewalk to deny enough space for tents, because he felt he lacked the authority to remove the squatters. In addition to the Thomas Square example, let's remember how protesters against the TMT telescope not only lined the access road to intimidate traffic headed toward the Mauna Kea summit but actually erected huge tents directly blocking the road itself. Therefore:

PROPOSED AMENDMENT #2: At the end of Section 1, immediately before Section 2, add the phrase: "Except that persons sitting or lying in sidewalks or other pedestrian walkways shall be removed, along with their tents and belongings, if their presence causes danger to pedestrians who must step into traffic or other dangerous conditions in order to avoid them."

FURTHER SUGGESTION: Consider including the mo'olelo (legend, story) of Kamehameha's initial assault on the fishermen, his later summons and mihi (repentance and apology) directly to the fishermen, and his restitution by pardoning them for their own self-defense against him and by proclaiming the Law of the Splintered Paddle. The way you write this bill, including the precise bilingual wording of the Law and the inspirational mo'olelo behind it, should be a source of inspiration for Hawaii's children and adults alike. A minor example of that sweet community engagement on legislation happened a few years ago when Hawaii's children were asked to participate in choosing the "state musical instrument" and the result, after considerable discussion in school and at home, was legislation recognizing both the pahu drum and the 'ukulele.



Committee: Committee on Hawaiian Affairs  
Hearing Date/Time: Tuesday, February 16, 2021, 1:02 p.m.  
Place: Via videoconference  
Re: Testimony of the ACLU of Hawai'i in Support of S.B. 1246, Relating to the Law of the Splintered Paddle

Dear Chair Shimabukuro, Vice Chair Keohokalole, and Members of the Committee:

The American Civil Liberties Union of Hawai'i ("ACLU of Hawai'i") writes **in support of S.B. 1246**, which seeks to further codify and uphold Kānāwai Māmalahoe, or the Law of the Splintered Paddle, by prohibiting counties from enacting ordinances such as sit-lie bans that punish people who sleep by the roadside, including sidewalks.

The City & County of Honolulu has been steadfast in its effort to criminalize and/or civilly penalize the status of being poor through the enforcement of myriad anti-homeless laws, such as sit-lie bans, stored property ordinances, and sidewalk nuisance ordinances.<sup>1</sup> Additionally, citations issued pursuant to the Governor's and Mayor of Honolulu's emergency proclamations on COVID-19 under Haw. Rev. Stat. § 127A-25 were disproportionately enforced against people experiencing houselessness.<sup>2</sup> The City's ordinances, as well as state laws such as Haw. Rev. Stat. §§ 708-814.7 and 711-1105, unfairly target innocent conduct that is a "universal and unavoidable consequence of being human."<sup>3</sup>

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<sup>1</sup> See, e.g., Revised Ordinances of Honolulu ("ROH") §§ 29-15.1, 29-15A.2, 29-15B.2 (sit-lie bans); ROH §§ 10-1.1, 10-1.2(a)(12), 10-1.2(a)(13), 10-1.2(a)(15), 10-1.3(a)(2) (park closure rules); ROH §§ 40-24A.1 – 40-24A.4 (urination and defecation bans); ROH §§ 29-16.1 to 29-6.3 & 29-10.1 to 29-19.8 (stored property and sidewalk nuisance ordinances); ROH §§ 29-8.1 to 29-8.11 (sidewalk structures ordinance). The City also passed Bills 51 and 52 in 2018, which criminalize "obstruction" of sidewalks and "lodging" in public places. City Ordinance 18-34, [http://www4.honolulu.gov/docushare/dsweb/Get/Document210691/DOC%20\(9\).PDF](http://www4.honolulu.gov/docushare/dsweb/Get/Document210691/DOC%20(9).PDF); Ordinance 18-35, <http://www4.honolulu.gov/docushare/dsweb/Get/Document-210692/DOC001.PDF>.

<sup>2</sup> Christina Jedra & Yoohyun Jung, *Easy Targets? Some Oahu Homeless Have Been Ticketed Dozens of Times During the Pandemic*, Honolulu Civil Beat (November 2020) (finding that HPD's pandemic enforcement shows homeless people account for nearly a quarter of pandemic violations, despite comprising less than one percent of the population), available at <https://www.civilbeat.org/2020/11/easy-targets-some-oahu-homeless-have-been-ticketed-dozens-of-times-during-the-pandemic/>.


<sup>3</sup> See *Martin v. Boise*, 920 F.3d 584, 616-17 (9th Cir. 2019) (quoting *Jones v. City of L.A.*, 444 F.3d 1118, 1136-38 (9th Cir. 2006)).

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The State and its counties must take immediate steps to end the criminalization of poverty. Sit-lie bans and other anti-homeless laws expressly violate the Law of the Splintered Paddle, enacted by King Kamehameha I and further enshrined the Article IX, Section 10 of the Hawai'i State Constitution. Enforcement of criminal laws prohibiting people from camping, sitting, lying, or engaging in other innocent conduct on public property also violates the prohibition on cruel and unusual punishment under the Eighth Amendment of the U.S. Constitution and Article I, Section 12 of the Hawai'i State Constitution as applied to people who are houseless and have no option to sleep indoors.<sup>4</sup> Further, saddling a person experiencing houselessness with fines and a criminal record is counterproductive to the goal of helping them lift themselves out of poverty and would violate the Eighth Amendment and Section 12 prohibitions on excessive fines.<sup>5</sup> The collateral consequences of criminal records on a person's ability to secure employment, housing, and services is well-documented.<sup>6</sup> S.B. 1246 will help put an end to these harmful laws and allow counties to reinvest resources previously reserved for enforcement into effective social services and housing.

Thank you for the opportunity to testify.

Sincerely,



Mandy Fernandes  
Policy Director  
ACLU of Hawai'i

*The mission of the ACLU of Hawai'i is to protect the fundamental freedoms enshrined in the U.S. and State Constitutions. The ACLU of Hawai'i fulfills this through legislative, litigation, and public education programs statewide. The ACLU of Hawai'i is a non-partisan and private non-profit organization that provides its services at no cost to the public and does not accept government funds. The ACLU of Hawai'i has been serving Hawai'i for over 50 years.*

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<sup>4</sup> *Id.*

<sup>5</sup> See *Blake v. City of Grants Pass*, No. 1:18-CV-01823-CL, 2020 WL 4209227, at \*10 (D. Or. July 22, 2020) (holding enforcement of anti-homeless ordinances “violates the Excessive Fines Clause”).

<sup>6</sup> Jaboa Lake, *Criminal Records Create Cycles of Multigenerational Poverty*, Center for American Progress (April 15, 2020), available at <https://www.americanprogress.org/issues/poverty/news/2020/04/15/483248/criminal-records-create-cycles-multigenerational-poverty/>.

**SB-1246**

Submitted on: 2/12/2021 2:05:35 PM

Testimony for HWN on 2/16/2021 1:02:00 PM

<b>Submitted By</b>	<b>Organization</b>	<b>Testifier Position</b>	<b>Present at Hearing</b>
cheryl B.	Individual	Support	No

Comments:

SUPPORT

Clarifying: Does this mean all counties? How will they be held accountable?

**SB-1246**

Submitted on: 2/12/2021 2:25:17 PM

Testimony for HWN on 2/16/2021 1:02:00 PM

<b>Submitted By</b>	<b>Organization</b>	<b>Testifier Position</b>	<b>Present at Hearing</b>
Victor K. Ramos	Individual	Oppose	No

Comments:

I strongly oppose this bill. As written, it clearly misinterprets the purpose of Ke Kanawai Mamalahoe (Law of the Splintered Paddle).

In addition, encouraging people to literally lay by the roadside is irresponsible because it's unsafe and encourages vagrants to encamp by the roadside.

**SB-1246**

Submitted on: 2/12/2021 3:39:32 PM

Testimony for HWN on 2/16/2021 1:02:00 PM

<b>Submitted By</b>	<b>Organization</b>	<b>Testifier Position</b>	<b>Present at Hearing</b>
Malia Marquez	Individual	Support	No

Comments:

Please support SB 1246. This was already a law by our Kamehameha Nui. It should still be in effect. We are Hawai'i nei and our Kings law should still stand. Mahalo for your time.



**SB-1246**

Submitted on: 2/12/2021 4:09:38 PM

Testimony for HWN on 2/16/2021 1:02:00 PM

<b>Submitted By</b>	<b>Organization</b>	<b>Testifier Position</b>	<b>Present at Hearing</b>
Victor K. Ramos	Individual	Oppose	No

## Comments:

I strongly oppose this bill. As written, it clearly misinterprets the purpose of Ke Kanawai Mamalahoe (Law of the Splintered Paddle).

In addition, encouraging people to literally lay by the roadside is irresponsible because it's unsafe and encourages vagrants to encamp by the roadside.

**SB-1246**

Submitted on: 2/13/2021 9:39:24 AM

Testimony for HWN on 2/16/2021 1:02:00 PM

<b>Submitted By</b>	<b>Organization</b>	<b>Testifier Position</b>	<b>Present at Hearing</b>
Regina Gregory	Individual	Support	No

Comments:

Thank you, this corrects a long-standing inconsistency.

It may require some additional language about blocking pedestrian traffic and business doorways.

**SB-1246**

Submitted on: 2/16/2021 12:16:21 AM

Testimony for HWN on 2/16/2021 1:02:00 PM

<b>Submitted By</b>	<b>Organization</b>	<b>Testifier Position</b>	<b>Present at Hearing</b>
Henry boothe	Individual	Support	No

Comments:

I strongly SUPPORT this bill.