

STATE OF HAWAI‘I
OFFICE OF THE PUBLIC DEFENDER

**Testimony of the Office of the Public Defender,
State of Hawai‘i to the Senate Committee on the Judiciary**

February 9, 2021

S.B. No. 1359: RELATING TO STATE PROPERTY

Chair Rhoads, Vice Chair Keohokalole, and Members of the Committee:

The Office of the Public Defender respectfully opposes S.B. No. 1359.

This bill is overly broad and would criminalize behavior long considered acceptable by community norms. The bill would create a new petty misdemeanor offense for putting up any written materials on State and County property, including fences and utility poles. There is no distinction regarding the intent of the individual charged, the type of written materials posted, or the type of State or County property on which the materials are posted. Thus, *it appears that an individual could be prosecuted for anything from posting a lost pet sign on a utility pole, a garage sale announcement on a street sign, or directions for a child’s birthday party or a drive-by baby shower on a fence or wall.* Imagine a distraught owner losing a pet being prosecuted for multiple charges of unlawful signage (presuming the owner will post multiple signs in the neighborhood) and subjecting the owner to 30 days of jail for each offense. Imagine a parent who simply wanted to provide directions for a child’s birthday party subject to being arrested and booked, posting bail, having a criminal record, and jeopardizing future employment prospects.

We are unaware of a public outcry against signs on utility poles, nor any danger posed by these written materials to public health or safety. There are already laws against littering and criminal property damage, both of which are punishable as petty misdemeanors and enforceable on State and County properties. If an individual’s conduct cannot be prosecuted under these existing statutes, it seems unlikely their conduct warrants the condemnation of a petty misdemeanor conviction.

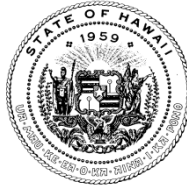
If the State must begin citing and/or arresting individuals who post written materials on State and County property, it would be a more efficient use of resources to create a *civil infraction* similar to jaywalking or seatbelt violations. First, it is simply not necessary to criminalize such conduct and to require offenders to hire attorneys or apply for the services of the Office of the Public Defender. The financial hit caused

by paying the citation for posting unauthorized signage will be a sufficient deterrent for most individuals from subsequent violations.

Second, a civil infraction will also reduce the burden on our already clogged court calendars because the onus will be placed on the individual to request a hearing if they wanted to challenge a citation. And for those individuals who disregard the citations, their unpaid citations will be turned into default judgments rather than bench warrants; this would reduce law enforcement resources spent on tracking down individuals with a bench warrant for putting up a sign, poster banner or any other written material on state or county property without permission.

Thank you for the opportunity to comment on S.B. No. 1359.

DAVID Y. IGE
GOVERNOR



TESTIMONY BY:

JADE T. BUTAY
DIRECTOR

Deputy Directors
LYNN A.S. ARAKI-REGAN
DEREK J. CHOW
ROSS M. HIGASHI
EDWIN H. SNIFFEN

LATE

STATE OF HAWAII
DEPARTMENT OF TRANSPORTATION
869 PUNCHBOWL STREET
HONOLULU, HAWAII 96813-5097

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State Capitol, Teleconference

S.B. 1359
RELATING TO STATE PROPERTY

Senate Committee on Judiciary

The Department of Transportation (DOT) **supports** S.B. 1359 that establishes an offense for placing written materials on state or county property without prior approval. The DOT agrees that any unlawful signage on state or county property should be a petty misdemeanor. However, DOT has the following concern:

Not all buildings are owned or administered by Department of Accounting and General Services.

Thank you for the opportunity to provide testimony.