

**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 Judiciary**

February 9, 2021

S.B. No. 288: RELATING TO THE PENAL CODE

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

The Office of the Public Defender respectfully opposes S.B. No. 288.

This measure is yet another attempt to criminalize poverty and homelessness. Most of individuals targeted by this measure are not on the sidewalks by choice. According to last year’s Point in Time (“PIT”) Count, 53% of O‘ahu’s houseless population is unsheltered, approximately 2,346 individuals. These individuals 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, and/or are mentally ill. Some are employed but cannot afford to pay rent given the current housing prices, and that category of houseless individual is likely to increase in the coming year due to job losses caused by the COVID-19 pandemic. It is a dereliction of duty to pass a law penalizing only the most visible symptoms of a problem that runs much deeper in our community. According to a Housing Planning Study prepared for Hawai‘i’s Housing and Development Corporation in 2019, our State needs to add 1,653 transitional shelter beds, 1,295 permanent supportive housing units, and 3,615 affordable housing units to address the needs of the houseless population. 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.

Although the proposed sanction for the first offense is a violation (and thus does not result in the arrest and booking of the alleged offender), many of those cited will likely not appear in court, and thus warrants for their arrest will be issued. These individuals will then need to be arrested, booked and brought to court at incredible expense for a simple violation.

And once these offenders are issued citations, what becomes of the “object” attached to a gate, fence or wall? Once the police or the owner of the gate, fence or wall detaches the object, the object will not only remain at the location but will also be unsecured. The purpose of attaching tents or “objects” to a fence, gate or a wall is simple -- to stabilize and secure the “object” from collapsing and/or being blown away. “Objects” that need to be secured cannot be anchored to a concrete sidewalk; they need to be secured to a stable structure -- whether it may be a pole, wall, fence, or gate. A detached or unsecured tent or tarp will collapse or get caught in the wind. Thus, there is a substantial risk that a detached unsecured object will cause severe injuries and/or significant property damage.

If the offenders are arrested on a subsequent offense, what are the police to do with the “object,” which would likely be a tent or tarp? What are the police to do with the property within the tent or under the tarp? The police cannot simply leave the detached “object” or the other personal property at the scene of the crime/arrest. Moreover, the detached “object” is evidence; thus, the “object” must be collected by the police. After an arrest, the police will have to collect and store the “object” and the personal property.

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 7, 2021). Thus, individuals placing posters, lost pet signs, handbills, campaign signs without the permission of the owner will be subject to criminal penalties.

An owner who gives permission to a political candidate to “attach” a campaign sign will likely want the sign to be removed once the election is over. In fact, there is likely an agreement -- whether it is expressed or implied -- that the sign is to be removed after the election. If the law is to be equally applied, the police will have to cite/arrest any elected official who fails to remove a sign after their election.

Thank you for the opportunity to comment on S.B. No. 288.

**LATE**

Melvin Jadulang  
Owner and Board President of 215 N King St  
Honolulu, HI 96817

February 8, 2021

The Honorable Karl Rhoads, Chair and  
Members of the Senate Judiciary Committee  
Hawaii State Capitol  
415 South Beretania St  
Honolulu, HI 96813

Dear Chair Rhoads and Members:

I am submitting this to be included in the record for Senate Bill 288, Relating to the Penal Code.

As Iwilei/Chinatown residents, we are well aware of the issues caused by homelessness in the community. While the attempts by the legislature to address these issues is greatly appreciated, we do not agree that this bill will have a tangible impact on the problem.

To be clear, the association at 215 N King St has spent in excess of \$30,000 dollars to repair damages due to homeless encampments tying up to the fence line, including a tent that caught fire likely due to illegal drug use. This fire melted the metal fencing, causing both a security concern for the residents and requiring extensive repairs, while also contributing to a sense on the part of the residents that the inundation of homeless in the area were a direct threat to their physical safety and well being. In addition to this, homeless frequently urinate and defecate through the fence into the landscaping on our property, creating a health hazard that is left to the association's staff to remediate. These deliberate and accidental behaviors at the fenceline caused by the large numbers of homeless require constant monitoring and repair ultimately increasing our cost of operations and directly impacting the 250 families of the building.

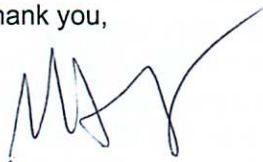
In light of this, we have every reason to support the proposed legislation. We just cannot bring ourselves to agree that this approach will achieve the desired end result. Practically speaking, it's highly unlikely that a sworn officer of the Honolulu Police Department could be convinced to spend their time citing, not to mention charging, booking and arresting "repeat" offenders. It's understandable why the HPD formally registered their opposition to this bill during the 2019 session. Additionally, if we were to accept that HPD officers would somehow enforce this newly criminalized behavior, can any of us take seriously the thought of someone being criminally prosecuted for tying their tent to a fence? Even though we have been personally aggrieved by such acts, the thought of congesting the criminal justice system with such banal affairs still seems a bridge too far.

It is still frustrating that the City and County of Honolulu, and the State of Hawai'i, have consistently failed to come up with more imaginative and substantive solutions to this issue. There are many underlying challenges, including homeless who refuse to go to shelters, and lack of funding for housing programs, the utter lack of attempts to even begin approaching the problem with a solution of sufficient scope is both disheartening and maddening. One is left to wonder what became of the housing first campaign that received so much attention during the 2018 election cycle. Considering how much we spend on enforcement and what this bill would seemingly be willing to commit in criminal justice system resources, can we not propose bold solutions to provide accommodations for Oahu's homeless? The inability to enjoy the public spaces on Oahu is a common and constant shared frustration for all of us. Condo associations like ours literally suffer sustained financial damage, while residents of our neighborhood hesitate to utilize parks, not least because the sidewalks to get to them are blocked by tents and other makeshift shantys.

According to 2020 Point-in-Time counts, there are between 4,000-6,000 homeless persons on Oahu, a finite number. At a cost of \$25,000 per person, it would cost \$150,000,000 to provide Housing First Services to 6,000 people (Civil Beat). Put another way, just under 2% of the very pessimistically projected state tax revenues of \$7.6 billion for 2021 (FB 2021-23 Executive Budget, Budget in Brief).

While we very much would like for our fence to not be damaged any further, it is clear that simply trying to criminalize our way out of the problem will never work and far bolder measures are desperately needed.

Thank you,

A handwritten signature in black ink, appearing to read 'Melvin Jadulang', with a long, sweeping flourish extending to the right.

Melvin Jadulang  
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References:

<https://www.civilbeat.org/2020/03/honolulus-spending-on-homeless-stagnates-even-as-problem-persists/>

<https://budget.hawaii.gov/budget/>