

SB 2955

RELATING TO PROBATION OFFICERS

Description:

Provides that probation officers are permitted to carry electric guns for protection.



The Judiciary, State of Hawaii

**Testimony to the Senate Committee on Public Safety, Government Operations, and
Military Affairs**

Senator Will Espero, Chair
Senator Michelle N. Kidani, Vice Chair

Thursday, February 9, 2012, 2:45 p.m.
State Capitol, Conference Room 224

by
Cheryl Marlow
Adult Client Services Branch Administrator

Bill No. and Title: Senate Bill No. 2955, Relating to Probation Officers.

Purpose: Provides that probation officers are permitted to carry electric guns for protection.

Judiciary's Position:

The Judiciary appreciates the underlying intent of this bill which is to provide probation officers with a means to protect themselves, however, this bill would have potentially adverse impact on Judiciary operations and personnel.

Although HRS 806-73(c) provides that probation officers shall have the duties and powers of a police officer, in the State of Hawaii, Judiciary probation officers are classified as social workers for employment purposes, not as peace officers. Unlike other states, Hawaii does not have a probation officer academy, nor does it require probation officers to undergo law enforcement background checks and psychological evaluations which are typically used to determine an applicant's suitability for performing peace officer duties such as effectuating arrests, using force, etc. Instead, probation officers are trained to take an evidence-based approach in case planning and supervision of probationers with a goal of changing behavior and ultimately reducing offender recidivism.

We recognize that the bill does not require all probation officers to actually carry electric guns, but we would also note that this bill presents a number of safety and liability issues for the State of Hawaii and the Judiciary. If probation officers are to be armed with electric guns as part



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of their duties, the Judiciary would be required to provide extensive and ongoing training in the certification and proper use and care of electric guns. This bill does not appear to allocate monies to purchase equipment or to provide training for probation staff.

The safety of all of our employees, including our probation officers is a primary concern of the Judiciary, and we sincerely appreciate the Legislature's effort to ensure the safety of our probation officers through this measure. On balance, we would prefer other more comprehensive means to provide additional safety measures for all Judiciary employees.

Thank you for the opportunity to testify on Senate Bill No. 2955.

From: mailinglist@capitol.hawaii.gov
Sent: Thursday, February 02, 2012 10:51 AM
To: PGM Testimony
Cc: slathrop73@hotmail.com
Subject: Testimony for SB2955 on 2/9/2012 2:45:00 PM
Attachments: Senate testimony.docx

Testimony for PGM 2/9/2012 2:45:00 PM SB2955

Conference room: 224
Testifier position: Support
Testifier will be present: No
Submitted by: Shawn Lathrop
Organization: Hawaii State Judiciary Adult Probation
E-mail: slathrop73@hotmail.com
Submitted on: 2/2/2012

Comments:

The job of a Probation Officer or Parole Officer is fraught with dangers and risks. Everyday we are placed in positions where we must try to operate from behind an illusion of authority as officers of the court. Presentence Investigators like myself are responsible for investigating defendants and making recommendations for sentencings in criminal court. Based on the information we gather these recommendations run the gambit from suspended jail time with probation and court-ordered fines and fees to prison time. We must face defendants and their families in both our professional time and our personal time. And often these defendants and their families are unhappy or angry with us and see us as their enemies. On top of that are the dangers we must deal with when defendants come to our offices and when we are expected to conduct home visits for defendants. It is the latter that raises the most concern for our safety.

We Probation Officers and the Parole Officers in the State of Hawaii are responsible for conducting home visits with defendants to ascertain whether they are complying with the terms and conditions of their probation or, as in the case with Presentence Investigations, to confirm residency and to determine if there is continued criminal activities on the part of the defendant. This may include a defendant awaiting sentencing for drug-related offenses who is using or is in possession of illegal drugs and/or paraphernalia in their home or a defendant awaiting sentencing for sex offenses who is in possession of pornography or is in a home where children are present. Without conducting home visits, we cannot verify such information and such defendant may continue to commit crimes while under the guise of compliance.

However, we are not able to conduct these important home visits for two reasons:

1. We are not trained in the use of or issued protective devices such as electric stun guns;
2. While we are told to have a uniform police officer accompany us, there are never enough available to assist us.

And so, because we cannot conduct these home visits, criminal activities continue while the judiciary operates under the belief that such criminals are changing their behaviors for the better. It is only when such criminals are finally caught, usually by chance, that we find out they were breaking the law and violating court orders while we are reporting them as being in compliance.

By training Probation Officers and Parole Officers in the use of electric stun guns and issuing such protective devices to us, you allow us to fulfill the full scope of our responsibilities and prevent future crimes by defendants through closer supervision and more thorough investigation as well as assist our police in catching criminals earlier than usual through surprise home visits.

Another concern is the safety of Probation Officers and Parole Officers in the community. It is not uncommon for us to see defendants we have sentenced or supervise in the community. And while there is the misguided belief that everyone in Hawaii practices "Aloha", the truth is much, much more frightening. Violent crimes are on the rise and the fact that we deal with violent offenders, sex offenders and those involved in the illegal drug trade puts us at higher risk than most other people. An article in the Marin Independent Journal on June 19, 2008 also touches on this subject. The article shared information from Probation Officers in that area who had the same concerns as I:

http://www.marini.com/marinnews/ci_9639017

Probation Officers and Parole Officers are often targets of retaliation and violence by defendants and their families/friends. A simple reading of the Officer Down Memorial Page at <http://www.odmp.org/> will enlighten you to the kinds of harm we face every day.

Now, there are those who will oppose this bill. Most likely Chiefs of Police and the Judiciary and/or Department of Corrections Administrations. You will hear words like "liability" and "safety concerns". But consider for a moment the liability on the part of the State of Hawaii and the Judiciary when a Probation Officer is injured or killed by a defendant. What about the liability at issue when the injured Probation Officer or a dead Probation Officer's family sues the State and the Judiciary for failing to provide protection? What about the liability for those who are caught in the crossfire when a defendant assaults a Probation Officer in the probation office or in court? Will the Hawaii State Department of Corrections take into consideration the liability issue when one of their Parole Officers is injured or killed by a defendant or parolee? When such concerns are presented to our Chiefs of Police the response is always the same, "if you feel threatened or are being harmed call the police". Very, very empty words when you consider the woefully inadequate response time by police in Hawaii. There was an incident at the Kona Family Court approximately a year or so ago when two families became engaged in a large brawl in the parking lot of our building. There was one Sheriff Deputy on the scene who tried his best to control the situation. At one point, he was knocked to the ground and his sidearm was exposed. Luckily, nobody took it from him, but imagine if they did! During the incident, numerous people, including myself, called 911 and informed Police Dispatch that there was a brawl occurring and that a Sheriff Deputy was in danger. It took Kona Police almost 2 hours to respond! Imagine being a Probation Officer for the State of Hawaii and a defendant confronts you in the parking lot of your building or in the hall way or in your office or in the parking lot of the local grocery store. Are you going to put your trust in an undermanned and slow police force? Are you going to ask the defendant to stop hitting you, stabbing you or kicking you long enough for you to call police? Or would you rather have something to protect yourself with?

As far as "safety concerns" are considered, here is a question that should be answered of those who oppose this bill-Where are your concerns for the safety of Probation Officers and Parole Officers? Where is your concern for the safety of our families? We are not asking to be issued firearms and we are not asking for special treatment with this bill. All we are asking for is the sense of security and confidence that comes with being trained in the use of electric stun guns and having them in our possession when we are fulfilling the duties as officers of the court. While opponents of this bill will try to paint us Probation and Parole Officers as trigger-happy paranoids or fearful incompetents, I say that through proper training our confidence in the use of these devices will be fully apparent to defendant and others and give them cause to reconsider any thoughts they might have of violent acts, especially those they consider "retribution". After all, if we can entrust police officers to be trained in the use of these devices and carry them without concern, then why shouldn't we entrust the Probation and Parole Officers who are just as responsible?

I strongly encourage you to pass this bill into law in order to prevent the kinds of tragedies that are far too common on the mainland. It is only a matter of time before a Probation Officer or Parole Officer is harmed or killed in the line of duty. How will it weigh on your conscience to know that you could have prevented such a needless tragedy by simply voting "Yes" on this bill? Like all such events we prepare for in today's society, it is not IF it will happen but WHEN it will happen.

I thank you for allowing me to provide written testimony on behalf of this bill and I make myself available to you to testify in person if needed.

Mahalo,

Shawn Lathrop



Committee: Committee on Public Safety, Government Operations and Military Affairs
Hearing Date/Time: Thursday, February 9, 2012, 2:45 p.m.
Place: Conference Room 224
Re: Testimony of the ACLU of Hawaii in Opposition to S.B. 2955, Relating to Probation Officers

Dear Chair Espero and Members of the Committee on Public Safety, Government Operations & Military Affairs:

Electric guns (“TASER”) are lethal weapons. Hundreds of individuals have died after being “tased,” with the TASER being the sole or contributory cause in at least forty cases between 2001 and 2008. AMNESTY INTERNATIONAL, ‘LESS THAN LETHAL?’ THE USE OF STUN WEAPONS IN US LAW ENFORCEMENT 20 (2008).¹ The TASER results in the introduction of a significant amount of electrical current into a person’s body and can cause burns and permanent scarring.

Because of a lack of clear policies, TASERS are frequently used by law enforcement officers in situations where deadly force would never be contemplated. Consequently, the ACLU of Hawaii recommends that this Committee decline expanding the use of electric weapons and instead reform current electric weapon policies as follows:

- **Pass Legislation restricting officers from using a TASER unless it is used as an alternative to deadly force.** The British Government currently employs such restrictions. Although a TASER is generally a safer alternative to a firearm, law enforcement agencies should be restricted from using electric weapons in non-life-threatening situations until more independent safety studies are completed.
- **Adopt Stricter Policies.** Local government and local law enforcement should each independently adopt TASER policies. Agencies should, at a bare minimum, adopt policies to minimize the risk of death such as prohibiting repeated shocks and protecting

¹ Available at <http://www.amnesty.org/en/library/asset/AMR51/010/2008/en/530be6d6-437e-4c77-851b-9e581197ccf6/amr510102008en.pdf>. See also Chelsea Krotzer, *Officials Release Details Of Sunday Stun Gun Incident*, BILLINGS GAZETTE, Oct. 14, 2010, available at http://billingsgazette.com/news/local/crime-and-courts/article_e2f11334-d7b2-11df-bb9a-001cc4c002e0.html. For more information on TASER use and abuse, please see American Civil Liberties Union of Northern California, *Stun Gun Fallacy: How the Lack of Taser Regulation Endangers Lives* (2005), available at http://www.aclunc.org/issues/criminal_justice/police_practices/asset_upload_file593_5242.pdf. Further, please see NC Taser Safety Project, *Not There Yet: The Need for Safer TASER Policies in North Carolina*, 2008, available at <http://acluofnc.org/files/NotThereYet.pdf>.

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vulnerable populations such as the very young, the elderly and pregnant women. Further, policies should require more detailed reporting and mandatory medical treatment to those exposed to electric weapons, regardless of whether they are ultimately arrested.

- **Revise Training Materials.** Local law enforcement agencies should conduct comprehensive reviews of the TASER International training materials, revise them, and retrain all officers that have already completed the TASER International training.

Please note also that the ACLU of Hawaii opposes any attempts to reduce the amount of training that law enforcement officers must receive before using potentially lethal weapons such as TASERs or other electric guns. The Ninth Circuit Court of Appeals recently concluded that Maui Police Department officers used excessive force in using a TASER on a domestic violence victim, *see Mattos v. Agarano*, ___ F.3d ___ (9th Cir. Oct. 17, 2011) (available at <http://www.ca9.uscourts.gov/datastore/opinions/2011/10/17/08-15567.pdf>); by lessening training and accreditation standards, the State is exposing itself to liability for excessive force (not to mention putting the safety of the community at risk).

The mission of the ACLU of Hawaii is to protect the fundamental freedoms enshrined in the U.S. and State Constitutions. The ACLU of Hawaii fulfills this through legislative, litigation, and public education programs statewide. The ACLU of Hawaii 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 Hawaii has been serving Hawaii for over 45 years.

Thank you for this opportunity to testify.

Sincerely,

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