



## *The Judiciary, State of Hawaii*

### **Testimony to the Senate Committee on Judiciary and Labor**

Senator Gilbert S.C. Keith-Agaran, Chair  
Senator Maile S.L. Shimabukuro, Vice Chair

Thursday, 02/11/2016, 9:00 a.m.  
State Capitol, Conference Room 016

by  
Sidney Nakamoto  
Probation Administrator, First Circuit

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**Bill No. and Title:** Senate Bill No. 2567, Relating to Probation

**Purpose:** Authorizes court to condition probation on requirement that a convicted defendant stay nightly in a homeless facility. Clarifies that probation may be imposed for conviction of a county crime. Appropriates moneys from the general fund for implementation.

### **Judiciary's Position:**

The Judiciary takes no policy position on the requirement that convicted defendants stay nightly in homeless facilities as a condition of probation but wishes to mention barriers to the enforcement of such a condition. On the islands of Molokai and Lanai there are no formal homeless resource facilities so the condition would be unenforceable. The island of Maui has only three centers and application often results in a wait list placement. The island of Kauai has one facility with twenty-four beds and the shelter is restrictive as to who they accept. The island of Hawaii has two facilities, one in Kona and the other in Hilo.

Felony, violent and sex offenders are excluded from some shelters and others give priority to families with children. Most homeless facilities have requirements and policies that need to be followed in order to gain access. The Institute for Human Services Inc. on the island of Oahu is the largest homeless facility offering shelter to males, females, and families. Their requirement for an individual wanting shelter is to participate in a formal intake process and submit a TB test result within three days.



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There is often a lack of bed space in homeless facilities. Most, if not all homeless resources are at maximum capacity with wait lists.

Enforcement of this condition would also require the monitoring of offenders by both homeless facility staff and probation officers in order to determine whether the defendant was present or absent every night. Violations of the condition would require action on the part of the probation officer to prepare affidavits and violation reports, as well as reports to the court on subsequent Motions to Modify and/or Revocation of Probation. These actions would require expending staff time and resources on low-risk, non-violent offenders. This is not consistent with the Judiciary's Adult Client Services Branch goal of using evidence-based practices to reduce recidivism of high risk offenders. In addition, increased violation hearings for non-compliant offenders would take additional court, prosecuting attorney and public defender time and will likely result in an increase in the number of incarcerated offenders.

This bill may also require additional staffing, equipment, and office space if it is to be enforced.

Thank you for the opportunity to testify on Senate Bill No. 2567.



STATE OF HAWAII  
DEPARTMENT OF HUMAN SERVICES  
P. O. Box 339  
Honolulu, Hawaii 96809-0339

February 11, 2016

TO: The Honorable Senator Gilbert S.C. Keith-Agaran, Chair  
Senate Committee on Judiciary and Labor

FROM: Rachael Wong, DrPH, Director

SUBJECT: **SB 2567 – RELATING TO PROBATION**

Hearing: Thursday, February 11, 2016; 9:00 a.m.  
Conference Room 016, State Capitol

**DEPARTMENT'S POSITION:** The Department of Human Services defers to the Judiciary on the measure's impact on operational requirements and resources for enforcement, and offers comments about the utilization of homeless facilities as alternatives in judicial sentencing.

**PURPOSE:** The purpose of the proposed bill is to authorize the courts to condition probation on the requirement that a convicted defendant stay nightly in a homeless facility, clarifies that probation may be imposed for a county crime, and appropriates general funds for implementation.

Homeless facilities or shelters are generally operated by private non-profit organizations, many of which receive funding through the Department and other sources. Each shelter may create its own eligibility standards as long as the eligibility rules fall within guidelines established by the state. Given this dynamic, it would likely be untenable for homeless shelters to commit bed spaces to the Courts for the purpose of sentencing without a committed source of funding and without a coordinated plan for this special population. In other words, shelters would need to receive stipends to keep bed spaces available for sentenced defendants assuming that those defendants would voluntarily enter the shelter and assuming that the shelter staff would have the capacity to monitor the defendant in the manner suggested by the proposed measure.

Homeless individuals transitioning from detention, jails and prisons are a major concern for the homeless system of care. The Hawaii Interagency Council on Homelessness is working to strengthen the discharge planning done for these individuals so that they do not remain homeless upon exiting public safety institutions. DHS is willing to discuss and coordinate services with the Judiciary, but at this juncture, additional resources and changes in eligibility guidelines would need to occur before this proposal could be implemented successfully.

Thank you for the opportunity to testify on this bill.