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*The Judiciary, State of Hawaii*

**Testimony to the Senate Committee on Transportation**

Senator Clarence K. Nishihara, Chair  
Senator Breene Harimoto, Vice Chair

Tuesday, February 3, 2015, 2:45 p.m.  
State Capitol, Conference Room 229

by  
Sidney Nakamoto  
Adult Client Service Branch Administrator  
First Circuit

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**Bill No. and Title:** Senate Bill No. 612, Relating to Probation

**Purpose:** Requires a period of probation for any person convicted of the offense of operating a vehicle under the influence of an intoxicant and operation a vehicle after license and privilege have been suspended or revoked for operating a vehicle under the influence of an intoxicant.

**Judiciary's Position:**

The Judiciary takes no position on policy issues involved but respectfully submits the following resource needs required for implementation of Senate Bill 612.

Based on the 2013 figure of DUI/DWI misdemeanor entry of judgments was 7,611 statewide offenders, with a caseload of 250 per probation officer, this is considered best practice for Hawaii, which is high compared to the national average of 93 cases per probation officer. This will require 29 additional probation officers at \$50,772 salary only; six judicial clerk support positions at \$31,000 salary only; office equipment (including desk, computer, printer, file cabinets, chairs) at \$3,300 per probation officer, excluding modular units; and office space costing close to \$500,000 annually on Oahu with one security officer at \$33,000. These identified needs equate to at least \$1,806,888 in additional resources for the Judiciary.

Thank you for the opportunity to provide comments on this measure.



**Office of the Public Defender  
State of Hawaii**

**Timothy Ho, Chief Deputy Public Defender**

**Testimony of the Office of the Public Defender,  
State of Hawaii to the Senate Committee on Transportation**



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February 3, 2015, 2:45 p.m.

RE: S.B. 612: Relating To Probation

Chair Nishihara and Members of the Committee:

This measure would amend §291E-61 and §291E-62, HRS, by requiring defendants convicted of operating a vehicle under the influence of an intoxicant (OVUII) and driving while license suspended for OVUII to be sentenced to a mandatory term of probation.

The Office of the Public Defender opposes S.B. 612.

High intensive probation supervision has proven to be successful in treating defendants with a substance and/or alcohol abuse problems and if properly administered, could work with some OVUII defendants. This measure, in its present form, will not be successful in rehabilitating defendants with alcohol dependency.

First of all, this measure mandates that all defendants convicted of OVUII be placed on probation. In order for OVUII probation to be successful, the resources should be directed at the highest risk defendants. S.B. 612 states that a person who commits the offense of OVUII "shall be sentenced as follows . . . by probation for not less than one year nor more than two years on the following conditions." This language, which appears in similar form on page 1, line 10, page 2, line 19, and page 4, line 3 makes probation mandatory, and not discretionary. The courts, and probation, should be able to concentrate its finite resources on defendants who fit the criteria for OVUII probation.

Secondly, the probationary period, which ranges from two years for a first offense to five years for a third offense is a disproportionately long period of time for a petty misdemeanor punishable by only a maximum thirty days in jail. Under the Drug/DWI court model, sanctions for probation violations include short jail sentences. Once a court has sentenced a defendant to a total of thirty days, it cannot impose any more jail. A two-year term of probation is more than sufficient for supervision of a defendant charged with a petty misdemeanor.

Finally, S.B. 612, in its current form, will be cost prohibitive. The judiciary estimates that it will cost \$1.8 million to establish a probationary program for OVUII cases. On O'ahu alone, our office will need to add two full-time attorneys

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and one clerical position in order to handle the addition of 5,000 to 7,000 probationary cases each year. We ask this committee to consider making probation mandatory only for third offenses, which number about a hundred each year.

In order to make probation discretionary for first and second offenses, we suggest that the language, "and notwithstanding section 706-623, by probation for not less than one year nor more than two years on the following conditions" be removed from page 1, line 10, and moved to section (1)(C) on page 2, line 12, by adding a section "iv" and inserting the language, "notwithstanding section 706-623, by probation for not less than one year nor more than two years." We also suggest that the language, "and notwithstanding section 706-623, by probation for not less than two years nor more than four years on the following conditions" be moved from page 2, line 19, to section (2)(B) as section "iii" and inserting the language, "notwithstanding section 706-623, by probation for not less than one year nor more than two years." Finally, we suggest that the language that appears on page 4, line 3, be amended to read, "and notwithstanding section 706-623, by probation for not less than three years."

Thank you for the opportunity to comment on this bill.