



EXECUTIVE CHAMBERS
HONOLULU

DAVID Y. IGE
GOVERNOR

January 23, 2017

TO: The Honorable Senator Josh Green, Chair
Senate Committee on Human Services

FROM: Scott Morishige, MSW, Governor's Coordinator on Homelessness

SUBJECT: SB 10 – RELATING TO HOUSING

Hearing: Monday, January 23, 2017, 2:45 p.m.
Conference Room 016, State Capitol

POSITION: The Governor's Coordinator on Homelessness appreciates the intent of this measure, and offers comments. The Coordinator notes that Act 243, Session Laws of Hawaii (SLH) 2015, established a working group that conducted research and made recommendations related to homeless individuals who did not have government issued identification. The interim report of the Act 243 (SLH 2015) work group detailed the difficulty and complexity involved in obtaining vital records and securing government issued identification. Following the recommendations of the Act 243 (SLH 2015) working group, the Department of Human Services (DHS) recently procured civil legal services to assist homeless individuals with obtaining government issued identification. The Coordinator further notes that this bill establishes a special fund, an office and procedures that may diminish or duplicate existing homeless efforts, functions and processes.

PURPOSE: The purpose of the bill is to establish the housing for the homeless special fund and executive office on homeless identity protection to assist homeless individuals with the process, including associated costs, of obtaining a government issued identification document. The bill also appropriates an unspecified amount out of the general revenues of the state to deposit to the credit of the housing for the homeless special fund.

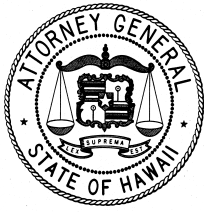
The Act 243 (SLH 2015) working group was tasked with making recommendations to address issues of government identification and homelessness. A link to the interim report to the working group is provided, <http://humanservices.hawaii.gov/wp-content/uploads/2016/01/Act-243-2015-Working-Group-Interim-Report.pdf>

Based on the working group recommendations, DHS recently issued a contract for civil legal services for homeless persons, which includes specific services for homeless persons who need assistance obtaining or replacing identification and other vital documents (e.g. birth certificate, or social security cards). In addition, DHS currently contracts homeless outreach providers to offer a range of services to unsheltered homeless households, including assistance with obtaining government issued identification. The Governor's Executive Budget request includes \$500,000 for civil legal services for homeless persons, as well as \$1.5 million for homeless outreach services.

The Coordinator also notes that Hawaii Revised Statutes (HRS) section 171-31.5 already establishes an existing process for the disposition of abandoned property on state land for all individuals, in contrast to this measure that establishes a separate process that is restricted only to individuals who are homeless. HRS section 171-31.5 requires a 30 day notice that property has been abandoned or seized, and provides a means for owners or abandoned or seized property to retrieve such property, which could include government issued identification or other government records. The establishment of a separate process for homeless individuals and government identification may result in confusion and inefficiency in government processes. The functions of the executive office on homeless identify protection may also unnecessarily duplicate services currently being offered by DHS contracted providers for homeless outreach and civil legal services.

Further, a special fund without exemptions from certain special fund administrative expenses would reduce available funds that may be used toward providing services.

Thank you for the opportunity to testify on this bill.



**TESTIMONY OF
THE DEPARTMENT OF THE ATTORNEY GENERAL
TWENTY-NINTH LEGISLATURE, 2017**

ON THE FOLLOWING MEASURE:
S.B. NO. 10, RELATING TO HOUSING.

BEFORE THE:

SENATE COMMITTEE ON HUMAN SERVICES

DATE: Monday, January 23, 2017 **TIME:** 2:45 p.m.

LOCATION: State Capitol, Room 016

TESTIFIER(S): Douglas S. Chin, Attorney General, or
Melissa Lewis, Deputy Attorney General

Chair Green and Members of the Committee:

The Attorney General supports the intent of this bill, but submits testimony with concerns that it may be challenged as including a possible constitutional issue.

The purpose of this bill is to establish (1) the housing for the homeless special fund, and (2) the Executive Office on Homeless Identity Protection. We specifically identify the following legal concerns.

Proposed section 346-B, Executive office on homeless identity protection; director; general functions, duties, and powers.

The second new section, section 346-B, HRS, at page 2, lines 15-20 and page 3, lines 1-2, provides for the establishment of an Executive Office on Homeless Identity Protection that “shall be temporarily placed within the office of the governor; provided that on July 1, 2019, the executive office on homeless identity protection shall be permanently established within the department of human services for administrative purposes only.” This provision raises a possible constitutional concern.

Article V, section 6, of the Hawai'i Constitution provides:

All executive and administrative offices, departments and instrumentalities of the state government and their respective powers and duties shall be allocated by law among and within not more than twenty principal departments in such manner as to group the same according to common purposes and related functions. Temporary commissions or agencies for

special purposes may be established by law and need not be allocated within a principal department.

The Executive Office on Homeless Identity Protection must be placed within one of the principal departments of the executive branch of state government. The Office of the Governor is a constitutional office established by sections 1 and 2 of article V of the Hawai'i Constitution. It is not a principal department of the executive branch of state government as listed in section 26-4, HRS.

Although the bill provides that the Executive Office on Homeless Identity Protection is "temporarily placed within the office of the governor," it does not fit within the exception allowed in article V, section 6, of the Hawai'i Constitution, which provides that "[t]emporary commissions or agencies for special purposes may be established by law and need not be allocated within a principal department." As our department previously noted in Attorney General Opinion No. 96-1, commissions or agencies not placed within a principal department must be both "temporary" *and* "for special purposes." The "temporary" placement within the Office of the Governor does not meet the "temporary" and "for special purposes" constitutional requirement in article V, section 6. That is because the current bill wording provides that the Executive Office on Homeless Identity Protection shall be a *permanent* office within the Department of Human Services, not a temporary office.

Our department has previously opined, in the opinion referenced above, that:

"[O]ffices" or other agencies created by law and not placed within a principal department of the state executive branch, "in such manner as to group the same according to common purposes and related functions," are subject to attack as being invalidly placed in violation of the first sentence of the first paragraph of section 6 of article V of the State Constitution.

Atty. Gen. Op. No. 96-1 (February 16, 1996).

The temporary placement of the executive office in the Office of the Governor has the potential to raise constitutional challenges that it violates article V, section 6, of the Hawai'i Constitution.

In order to lessen the potential for a constitutional challenge, we recommend modifying the wording to permanently establish the Executive Office on Homeless Identity Protection within the Department of Human Services, without first temporarily establishing that office in the Office of the Governor. This would include making the Department of Human Services the expending agency for any appropriation (page 5, lines 12-14), rather than the Executive Office on Homeless Identity Protection.

The Department respectfully requests that if the Committees passes this bill, it does so with these recommended changes.

HAWAII YOUTH SERVICES NETWORK

677 Ala Moana Boulevard, Suite 904 Honolulu, Hawaii 96813

Phone: (808) 489-9549

Web site: <http://www.hysn.org> E-mail: info@hysn.org

Rick Collins, President

Judith F. Clark, Executive
Director

Bay Clinic

Big Brothers Big Sisters of
Hawaii

Bobby Benson Center

Central Oahu Youth Services
Association

Child and Family Service

Coalition for a Drug Free Hawaii

Domestic Violence Action Center
EPIC, Inc.

Family Programs Hawaii

Family Support Hawaii

Hale Kipa, Inc.

Hale 'Opio Kauai, Inc.

Hawaii Student Television

Ho'ola Na Pua

Hui Malama Learning Center

Kokua Kalihi Valley

Life Foundation

Marimed Foundation

Maui Youth and Family Services

P.A.R.E.N.T.S., Inc.

Parents and Children Together
(PACT)

Planned Parenthood of the
Great Northwest and
Hawaiian Islands

Salvation Army Family

Intervention Services

Sex Abuse Treatment Center

Susannah Wesley Community
Center

The Catalyst Group

Uhane Pohaku Na Moku

O Hawai'i

Waikiki Health

January 21, 2017

Senator Josh Green, Chair
And members of the Committee on Human Services

Testimony in Support of the Intent of SB 10 Relating to Homelessness

Hawaii Youth Services Network, a statewide coalition of youth-serving organizations, supports the intent of SB 10 Relating to Homelessness.

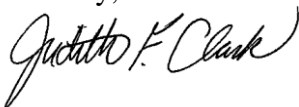
There are many credible reports of homeless individuals who have lost essential identification during sweeps of homeless encampments and enforcement of the laws that forbid sitting, lying, or storing possessions on a sidewalk. Homeless persons are also at high risk for theft of their identification as they lack secure facilities to store their belongings. This includes unaccompanied runaway and homeless youth who are living without support or guidance from their families.

Without identification, it is difficult to obtain employment, enroll in school, or obtain housing. Replacement of confiscated identification can be a long and tedious process requiring months of effort. It is especially difficult for adolescents who are not legally adult, and lack the experience and skills for adult independent living.

Hawaii Youth Services Network is not sure that it is necessary to establish a new executive office specifically to handle homeless identification issues. We would prefer see an already existing government entity (or possibly a non-profit contractor such as the Aloha United Way) take on this responsibility at a lower cost.

Thank you for this opportunity to testify.

Sincerely,



Judith F. Clark, MPH
Executive Director



46-063 Emepela Pl. #U101 Kaneohe, HI 96744 · (808) 679-7454 · Kris Coffield · Co-founder/Executive Director

TESTIMONY FOR SENATE BILL 10, RELATING TO HOUSING

Senate Committee on Human Services
Hon. Josh Green, Chair
Hon. Stanley Chang, Vice Chair

Monday, January 23, 2017, 2:45 PM
State Capitol, Conference Room 016

Honorable Chair Green and committee members:

I am Kris Coffield, representing IMU Alliance, a nonpartisan political advocacy organization that currently boasts over 350 members. On behalf of our members, we offer this testimony in support of Senate Bill 10, relating to housing.

Over the past few years, county governments have enacted several ordinances aimed at “compassionately disrupting” homelessness on O’ahu. The most prominent of these ordinances are sit-lie bans, which were originally implemented in high commerce areas like Waikiki, but have been expanded to commercial properties located in all regions of O’ahu, including windward and leeward towns and, recently, malls bordered by businesses. Additionally, “obstruction” ordinances target property stored on sidewalks and houseless persons remaining in parks after operating hours. These city ordinances amount to an unconstitutional criminalization of the homeless.

Many judges and legal experts around the country have repeatedly argued that these laws are selectively enforced against the homeless in the form of unannounced property raids, which constitute an unconstitutional violation of the Fourth Amendment's search and seizure protections. For clarity, the Fourth Amendment provides that:

“The right of the people to be secure in their persons, houses, papers, and effects, against unreasonable searches and seizures, shall not be violated, and no Warrants shall issue, but upon probable cause, supported by Oath or affirmation, and particularly describing the place to be searched, and the persons or things to be seized.”

Again, for clarity, the terms “search” and “seizure” were concisely summarized in the majority opinion to *United States v. Jacobsen*, 466 U.S. 109 (1984), which declared that Fourth Amendment, “protects two types of expectations, one involving 'searches', the other 'seizures'. A *search* occurs when an expectation of privacy that society is prepared to consider reasonable is infringed. A *seizure* of property occurs where there is some meaningful interference with an individual's possessory interests in that property.” According to these understandings, when law enforcement officers, without notice, raid a homeless encampment and usurp—and often destroy—homeless people's belongings, including basic government documents and identification, the city is violating homeless people's civil rights.

During property raids, homeless people's government-issued documents are often confiscated, documents that are necessary for employment applications, housing applications (including entrance into Housing First programs), travel, and identity verification. In December of 2014, homeless provider agencies reported that of 540 homeless people were listed as potentially eligible for the state or city's Housing First programs, only 62 had a picture ID that proving their identity and granting admittance into the program. Thus, 478 homeless families and individuals can't clear the first hurdle to getting into housing. Additionally, *Civil Beat* reported in July of 2014 that our state's jails are destroying homeless people's ID cards, purportedly because of “liability concerns.”

It can take months to replace ID cards and cost up to \$100 or more to replace government documents, including those necessary to re-obtain an ID. The Department of Public Safety's own mental health administrator, Mark Mitchell, said at the time that homeless people's ID cards were being discarded regularly, telling *Civil Beat* that homeless people's identification cards were being tossed unless he called and specifically requested a waiver for a mentally ill inmate, further claiming that about one-third of all the inmates he saw for mental health issues were homeless. Once released, mental health patients were unable to get medical assistance because health services often require an ID.

While expanding state and county homeless programs has reduced the number of raids, the problem of identification loss—really, identity theft—has not been resolved. In effect, we're forcing homeless people into a pernicious cycle. To replace a state ID, a homeless individual has to get a social security card. To get a social security card, however, they must have state documents that require identification for obtainment. Birth certificates, for example, often must be notarized. Notarization requires ID.

This measure's proposed "executive office on homeless identity protection" will streamline the process for reobtaining lost property, especially identification, which is cumbersome and involves multiple agencies—something people who often lack the funds for public transportation simply cannot afford. That said, we urge the committee to couple the new agency with statutory provisions precluding identification cards from being taken without legal cause and subsequently destroyed, such as the regulations proposed in Senate Bill 11, which would prevent the cycle of property loss from exacerbating our houseless population's hardship. We additionally encourage the committee to consider funding the new executive office through general funds, if necessary, to avoid duplicating general and special fund purposes and ensure a clear nexus between the funding stream for the office and the office's purpose.

Houseless assistance should not be held hostage to discrimination against the most economically vulnerable in our community. We applaud this proposal for assisting the homeless in preserving their dignity and personal security.

Mahalo for the opportunity to testify in support of this bill.

Sincerely,
Kris Coffield
Executive Director
IMUAlliance