



EXECUTIVE CHAMBERS
HONOLULU

DAVID Y. IGE
GOVERNOR

January 23, 2017

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

The Honorable Clarence K. Nishihara, Chair
Senate Committee on Public Safety, Intergovernmental, and Military Affairs

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

SUBJECT: SB 11 – RELATING TO HOMELESSNESS

Hearing: Monday, January 23, 2017, 3:00 p.m.
Conference Room 016, State Capitol

POSITION: The Governor's Coordinator on Homelessness appreciates the intent of this measure, and offers the following comments. The Coordinator notes that Act 243, Session Laws of Hawaii (SLH) 2015, established a working group that conducted research and reported on the existing processes to retrieve government identification from identified government agencies. The Act 243 (2015) work group made recommendations related to homeless individuals who did not have government issued identification. Following the recommendations of the Act 243 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 an office and procedures that appear to duplicate existing functions and processes. An additional office and new procedures may result in greater inefficiencies in government operations. The Coordinator defers to the Department of the Attorney General and other executive departments regarding current statutory processes and constitutional issues.

PURPOSE: The purpose of the bill is to protect homeless individuals from having their personal property taken from a state or county agency without proper documentation procedures and the ability to recover property from the agency. The bill also establishes the executive office on homeless identity protection to assist homeless individuals with recovering government issued identification documents.

One of the questions researched by the Act 243 working group was “Do the Honolulu Police Department, State Department of Public Safety, and the City & County of Honolulu retain or destroy government issued ID?” According to the report of the working group, “agencies reported that each agency does not retain or destroy government issued ID.” The working group described that the City & County of Honolulu has an established process to return identification to its owner, and to store identification for 30 days if the owner is unknown or cannot be located.

The working group made specific recommendations to the Legislature to assist homeless individuals to more easily obtain government issued identification. Based on the working group recommendations, DHS Homeless Programs Office recently issued a contract for civil legal services, which includes specific services to assist homeless persons who need assistance obtaining or replacing identification and other vital documents (e.g. birth certificate, or social security cards), as well as other legal services that address legal barriers or other processes to end the individual's homelessness. 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.

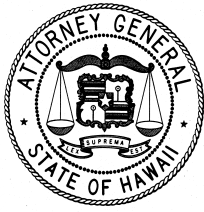
The Coordinator also notes that the Legislature already provided in Hawaii Revised Statutes (HRS) section 171-31.5, a process for the disposition of abandoned property on state land for all individuals, including individuals who are homeless. HRS section 171-31.5 requires a 30 day notice that property 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 an additional process particularly for homeless individuals may likely result in confusion. 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, the Coordinator notes that this measure does not provide an appropriation for the executive office on homeless identity, and does not establish positions to staff the functions of the office.

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. 11, RELATING TO HOMELESSNESS.

BEFORE THE:

SENATE COMMITTEES ON HUMAN SERVICES AND ON
PUBLIC SAFETY, INTERGOVERNMENTAL, AND MILITARY AFFAIRS

DATE: Monday, January 23, 2017 **TIME:** 3:00 p.m.

LOCATION: State Capitol, Room 016

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

Chairs Green and Nishihara and Members of the Committees:

The Attorney General supports the intent of this bill, but has concerns, including a possible constitutional issue.

The purpose of this bill is to protect homeless individuals from having their personal property taken without certain safeguards and to establish the Executive Office on Homeless Identity Protection to assist homeless individuals with recovering government-issued identification documents. We identify below the areas of the bill that raise legal concerns.

1. Proposed section 346-A, Homeless protections; personal property; identification; recovery.

Section 2 of this measure adds two new sections to chapter 346, Hawaii Revised Statutes (HRS). New section 346-A, HRS, at page 2, lines 2-6, provides that “Notwithstanding any law to the contrary, it shall be unlawful for any state or county agency to confiscate personal property, including government-issued identification documents, from a homeless individual unless the state or county agency” complies with specified requirements, including photographing, cataloging, and storing the personal property, and obtaining a written statement from the homeless individual. This provision raises the following concerns.

We caution that the provision may be overbroad because it could impede the state and counties' police and regulatory powers to protect public health, safety, and welfare. The provision does not address personal property that may be legally taken, including an item that presents an immediate threat to public health or safety or is subject to criminal forfeiture or warrant. Thus, this provision does not provide sufficient notice to the state and county agencies, nor the homeless individual, as to what personal property is subject to the protections under this provision. This lack of specificity may result in inconsistent application by those government agencies charged with applying the law and inconsistent interpretation by the courts.

To address this concern, we suggest replacing lines 2-6 on page 2 with the following wording:

“(a) Except as otherwise provided by law, a state or county agency shall not confiscate personal property, including government-issued identification documents, from a homeless individual unless the state or county agency:”

2. 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 3, lines 12-18, 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, 2018, the executive office on homeless identity protection shall be permanently established within the department 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.

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

DAVID Y. IGE
GOVERNOR OF
HAWAII



SUZANNE D. CASE
CHAIRPERSON
BOARD OF LAND AND NATURAL RESOURCES
COMMISSION ON WATER RESOURCE MANAGEMENT

KEKOA KALUHIWA
FIRST DEPUTY

JEFFREY T. PEARSON, P.E.
DEPUTY DIRECTOR - WATER

AQUATIC RESOURCES
BOATING AND OCEAN RECREATION
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KAHOOLAWE ISLAND RESERVE COMMISSION
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STATE PARKS

STATE OF HAWAII
DEPARTMENT OF LAND AND NATURAL RESOURCES

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Testimony of
SUZANNE D. CASE
Chairperson

Before the Senate Committees on
HUMAN SERVICES
and
PUBLIC SAFETY, INTERGOVERNMENTAL, AND MILITARY AFFAIRS

Monday, January 23, 2017
3:00 PM
Conference Room 016

In consideration of
SENATE BILL 11
RELATING TO HOMELESSNESS

Senate Bill 11 (SB11) proposes to protect homeless individuals from having their personal property taken without certain safeguards, and establishes an Executive Office on Homeless Identity Protection. **The Department of Land and Natural Resources (Department) respectfully opposes this bill because it has the potential to limit the Department's ability to maintain safe and open access to public lands.**

The language requiring that an agency "takes a written personal statement from the homeless individual" prior to confiscating property on state land would make it very difficult to remove personal property, human waste and trash from state lands in a timely and cost-effective manner. Some homeless individuals are transient in nature which would make it unlikely that they would be present and willing to provide a written personal statement. Other individuals may have mental health challenges that could make providing a written personal statement difficult, if not impossible.

The Department notes that Hawaii Revised Statutes (HRS) 171-31.5 already establishes a process for the disposition of abandoned property on state land for all individuals, not just the homeless. HRS 171-31.5 requires a 30 day notice that property has been abandoned or seized, and provides a means for owners of abandoned or seized property to retrieve such property, including IDs and other personal records.

As one of a number of state agencies dealing with homeless issues, working through the State Homeless Coordinator has proven to be effective and efficient. The Department believes that creating an Executive Office on Homeless Identity Protection would be duplicative.

Thank you for this opportunity to testify on SB11.



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COMMITTEE ON HUMAN SERVICES

Senator Josh Green, Chair

Senator Stanley Chang, Vice Chair

COMMITTEE ON PUBLIC SAFETY, INTERGOVERNMENTAL, AND MILITARY AFFAIRS

Senator Clarence K. Nishihara, Chair

Senator Glenn Wakai, Vice Chair

DATE: Monday, January 23, 2017

TIME: 3:00 p.m.

PLACE: Conference Room 016

Aloha Chairs Green and Nishihara, Vice Chairs Chang and Wakai, and Committee Members

RE; SB 11 RELATING TO HOMELESSNESS.

SUPPORT WITH AMENDMENT

Life of the Land is Hawai`i's own energy, environmental and community action group advocating for the people and `aina for 47 years. Our mission is to preserve and protect the life of the land through sound energy and land use policies and to promote open government through research, education, advocacy and, when necessary, litigation.

SB11 would protect homeless individuals from having their personal property taken from a state or county agency without proper documentation procedures and the ability

to recovery property from the agency. Establishes the executive office on homeless identity protection to assist homeless individuals with recovering government-issued identification documents.

We have been hearing horror stories where personal identification, wallets, and medicine have been confiscated and/or thrown into the garbage during indiscriminate homeless sweeps by the City and County of Honolulu. This is unacceptable.

Section 2 of the bill needs to be modified.

"§346-A Homeless protections; personal property; identification; recovery. (a) Notwithstanding any law to the contrary, it shall be unlawful for any state or county agency to confiscate personal property, ~~including government-issued identification documents,~~ from a homeless individual unless the state or county agency:

- (1) Takes photographs of the personal property;
- (2) Takes a written personal statement from the homeless individual; and
- (3) Catalogs and stores the personal property for later recovery;

(b) Notwithstanding any law to the contrary, it shall be unlawful for any state or county agency to confiscate government-issued identification documents and medicine.

Mahalo,

Henry Curtis
Executive Director

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 20, 2017

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

Senator Clarence Nishihara, Chair
And members of the Committee on Public Safety, Intergovernmental, and
Military Affairs

Testimony in Support of the Intent of SB 11 Relating to Homelessness

Hawaii Youth Services Network, a statewide coalition of youth-serving organizations, supports the intent of SB 11 Relating to Homelessness.

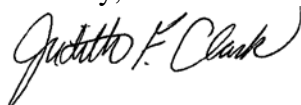
There are many creditable reports of homeless individuals who have lost essential identification during sweeps of homeless encampments and enforcement of the laws that forbid sitting, lying, or storing possessions on a sidewalk. Homeless persons are also at high risk for theft of their identification 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 11, RELATING TO HOMELESSNESS

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

Senate Committee on Public Safety, Intergovernmental, and Military Affairs
Hon. Clarence K. Nishihara, Chair
Hon. Glenn Wakai, Vice Chair

Monday, January 23, 2017, 3:00 PM
State Capitol, Conference Room 016

Honorable Chair Green, Chair Nishihara, and committee members:

I am Kris Coffield, representing IMUAlliance, 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 11, relating to homelessness.

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. Thus, precluding identification cards from being taken without legal cause and subsequently destroyed prevents the cycle before it begins. The proposed “executive office on homeless identity protection” would also streamline the process for reobtaining lost identification,” which is cumbersome and involves multiple agencies—something people who often lack the funds for public transportation simply cannot afford.

Homeless assistance should not be held hostage to discrimination against the most economically vulnerable in our community. We applaud this proposal for pressuring county officials to stop stealing people's government-issued identification. If it becomes necessary to delete provisions establishing the executive office on homeless identity protection for fiscal reasons, we urge you to do so. Our financially challenged populations must not be made to wait any longer for our state to preserve their personal security.

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

Sincerely,
Kris Coffield
Executive Director
IMUAlliance

From: mailinglist@capitol.hawaii.gov
Sent: Sunday, January 22, 2017 8:55 PM
To: HMS Testimony
Cc: cchaudron08@gmail.com
Subject: Submitted testimony for SB11 on Jan 23, 2017 15:00PM

SB11

Submitted on: 1/22/2017

Testimony for HMS/PSM on Jan 23, 2017 15:00PM in Conference Room 016

Submitted By	Organization	Testifier Position	Present at Hearing
Camila Chaudron	Individual	Support	No

Comments: Hello, my name is Camila Chaudron, and I am a constituent who lives in Manoa Valley. I support this bill because I believe that protecting the disenfranchised is important to maintaining a healthy civil society. Homeless individuals have a right to personal property. Our weak and poor need all the help they can get. Mahalo.

Please note that testimony submitted less than 24 hours prior to the hearing, improperly identified, or directed to the incorrect office, may not be posted online or distributed to the committee prior to the convening of the public hearing.

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