



*The Judiciary, State of Hawai‘i*

**Testimony to the Thirty-Third Legislature, 2025 Regular Session**

**Senate Committee on Judiciary**

Senator Karl Rhoads, Chair

Senator Mike Gabbard, Vice Chair

Tuesday, March 18, 2025 at 9:45 a.m.

State Capitol, Conference Room 016

By

Saifoloi Aganon

First Circuit, Probation Administrator

Craig Hirayasu

Second Circuit, Probation Administrator

Robert Calma

Third Circuit, Probation Administrator

ToriAnn Miyazaki

Fifth Circuit, Probation Administrator

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**Bill No. and Title:** House Bill No. 892, H.D. 1 Relating to Geographic Restrictions.

**Purpose:** Establishes limitations on geographical restrictions provided as a condition of probation. (HD1)

**Judiciary's Position:**

The Judiciary supports House Bill No. 892, H.D. 1 establishing limitations for geographical restrictions provided as a condition of probation.

Geographical restrictions as a condition of probation have significant impact on an individual's life. The goal and focus of an individual placed on court supervision is rehabilitation. These efforts include engaging in substance abuse and mental health treatment,



domestic violence intervention, vocational training, and other services and resources that will assist in effectuating prosocial change.

Currently, geographical restrictions have applied to areas that an individual is banned from entering. These geographical restrictions do not consider the resources and support of that individual and impacts significant life areas such as family relationships, employment, social support, and treatment services. Tailoring geographic restrictions to an individual's related criminal conviction considers the rehabilitative aspect of probation and ensures that all opportunities to meet their needs are available.

Relocating these individuals from familiar areas may lead to mental and emotional strain, causing feelings of isolation, frustration, or hopelessness, especially if they are cut off from opportunities or loved ones.

Additionally, while geographical restrictions are intended to promote accountability and public safety, it is not always an effective tool for probation because the size of the geographic area dilutes the enforceability of the condition and ultimately makes reintegration into society more challenging. We support the amendments made by the House Committee on Judiciary and Hawaiian Affairs to further define the geographical restrictions and consider the ability for the individual to access individual and cultural practices to the extent allowable by law.

Thank you for the opportunity to testify on House Bill No. 892, H.D. 1.



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**HB 892 RELATING TO GEOGRAPHICAL RESTRICTIONS**

Chair Rhoads, Vice Chair Gabbard, and Members of the Committee:

The Office the Public Defender SUPPORTS HB 892 HD1.

The Office of the Public Defender (OPD) is taking the rare step of reaching out to the legislature for guidance and clarity in the law for constitutional grounds in lieu of appealing an individual client's case to the Supreme Court. For over two decades, the City and County of Honolulu Office of the Prosecutor has requested geographical restrictions upon defendants in district court as a pretrial condition, or as a condition of probation through its "Weed and Seed" program and more recently the "Safe and Sound" program.

Since summer of 2024, the practice has changed. Requests have been made, without trial, for defendants to be barred from hundreds of acres of land across the island for petty misdemeanor and misdemeanor non-violent property crimes. The "Safe and Sound Westside" program is a clear violation of law. This program attempts to bar individuals from entering or remaining in a large portion of Oahu, bounded by and including the following streets / landmarks: the shoreline from Kahe Point Beach Park until Ka'ena Point State Park, and one (1) mile mauka of the shoreline.

Geographical restrictions are commonly issued in issues where a defendant has an order for protection placed against them, or there is a specific and articulable necessity to keep a pretrial defendant separated from a place or individual. The OPD understands the desire to keep certain portions of the island of Oahu low in minor crime for commercial or historic purposes. The current practice of blanket restrictions of movement upon hundreds of individuals charged with minor crimes across much of Oahu violates the law and morals of our community.

The policy of the Honolulu Prosecutor's office to request large and amorphous geographic restrictions upon defendants is unconstitutional and unreasonably infringes upon a person's freedom of locomotion and movement. The constitutionality of this practice has not

been tested before the courts, as most indigent defendants would rather strike an illegal and unfair deal than remain in custody awaiting trial. The OPD requests that the legislature enacts a reasonable guardrail upon a practice that, at present, is clearly illegal.

### DISTRICT COURTS ARE FINDING LARGE, AMORPHOUS GEOGRAPHICAL RESTRICTIONS ILLEGAL

As data is difficult to ascertain, the OPD has collected all “offer sheets” given to deputies in November and December of 2024 to determine how many times a geographical restriction has been requested of a defendant. An “offer sheet” is a document provided by the prosecutor to the defense which articulates the terms of a possible sentence upon conviction.

The majority of OPD cases have agreed with the legal and moral arguments of our clients and deputy public defenders and have been reticent to order geographical restrictions. From OPD data from November through December of 2024, a geographical restriction has been requested under “Safe and Sound” 109 times and granted 26 times. For 83 appearances, our clients have been allowed to move freely.

If appealed, the program would likely be found to be so broad and encompassing that the ordinance would be found unconstitutional, and void for vagueness because “[u]nless the activity at which presence is unlawful is in a narrowly confined place, determination of what constitutes presence at the activity can be resolved only on the basis of policy.” See, State v. Zowail 465 P.3d 689 (2020).

The freedom of movement is considered a human right, enshrined in law in the United States and in Hawaii. Although the Federal Constitution does not refer to a general right of privacy or freedom of movement, both privacy and freedom of movement have been consistently recognized as adjuncts of specific constitutional provisions. See, Griswold v. Connecticut, 381 U.S. 479 (1965); Kent v. Dulles, 357 U.S. 116 (1958); Williams v. Fears, 179 U.S. 270 (1900); Crandall v. Nevada, 73 U.S. (6 Wall.) 35 (1867). Furthermore, the Constitution has been held to protect other rights not specifically mentioned, Pierce v. Society of Sisters, 268 U.S. 510 (1925); Meyer v. Nebraska, 262 U.S. 390 (1923).

Hawaii has additional constitutional provisions regarding the freedom of movement. In addition to violating the above federal provisions, the ordinance violates explicit rights for residents and native Hawaiians as it bars the entrance onto land that is “undeveloped” or access to land or sea for cultural practices. Many of the defendants who are being subjected to geographical restrictions are native Hawaiians.

Under state law, individuals with native Hawaiian ancestry, “exercise such rights as were customarily and traditionally exercised for subsistence, cultural, and religious purposes on undeveloped lands” of an ahupua`a, and have an interest that is clearly distinguishable from that of the general public. This court has consistently recognized that “the reasonable exercise of ancient Hawaiian usage is entitled to protection under article XII, section 7.” See, State v. Hanapi, 970P.2d 485 (1889)

The “Safe and Sound” program of enhanced prosecution for charges that arise out of Waikiki and west Oahu has not been tested before the appellate courts. “Safe and Sound Westside” program is particularly egregious and is a clear violation of law. If programs of enhanced prosecution with geographic restrictions to continue, the legislature should put reasonable guardrails around its allowance.

Thank you for the opportunity to testify.

**DEPARTMENT OF THE PROSECUTING ATTORNEY  
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**THE HONORABLE KARL RHOADS, CHAIR  
SENATE COMMITTEE ON JUDICIARY  
Thirty-Third State Legislature  
Regular Session of 2025  
State of Hawai`i**

March 18, 2025

**RE: H.B. 892, H.D. 1; RELATING TO GEOGRAPHICAL RESTRICTIONS.**

Chair Rhoads, Vice-Chair Gabbard, and members of the Senate Committee on Judiciary, the Department of the Prosecuting Attorney of the City and County of Honolulu ("Department") submits the following testimony in **strong opposition** of H.B 892, H.D. 1.

House Bill 892, H.D.1 seeks to limit the ability of a court to order a geographical restriction in criminal cases.

Since the inception of Safe and Sound Westside on November 1, 2024, there have only been **four** geographical restrictions granted. One of those has already been terminated. Geographical restrictions are important law enforcement tool that keeps the perpetrators of crime out of an area so that the community is safe. They are also not requested if a defendant lives, works, or receives treatment in the Westside area unless there is an extraordinary reason.

The legislature has already endorsed the use of geographical restrictions as a part of probation. Section 706-624 of the Hawai'i Revised Statutes states that a court may order a defendant to "...[r]efrain from entering specified geographical areas without the court's permission..." if it is necessary to "...protect the public from further crimes of the defendant..." (Haw. Rev. Stat. §706-624(2)(m) and §706-606(2)(c)). To limit a court's ability to order a defendant to remain out of a geographical area in which that defendant has committed a crime or crimes would be an overreach for the legislative branch of government and lead to further crime being committed in that area.

For all of the foregoing reasons, the Department of the Prosecuting Attorney of the City and County of Honolulu **strongly opposes** the passage of H.B. 892 H.D.1. Thank you for the opportunity to testify on this matter.

**HB-892-HD-1**

Submitted on: 3/12/2025 4:57:20 PM

Testimony for JDC on 3/18/2025 9:45:00 AM

Submitted By	Organization	Testifier Position	Testify
Frank Schultz	Individual	Oppose	Written Testimony Only

Comments:

I oppose this initiative.

These are geographical restrictions imposed upon an individual found **guilty** of a crime and is ordinarily limited to specific individuals or property to deter future crimes committed by them.

With the exception of seeking emergency medical care these are valid restrictions for someone who has been convicted.

**HB-892-HD-1**

Submitted on: 3/17/2025 9:19:58 AM

Testimony for JDC on 3/18/2025 9:45:00 AM

<b>Submitted By</b>	<b>Organization</b>	<b>Testifier Position</b>	<b>Testify</b>
John Deutzman	Individual	Oppose	Written Testimony Only

Comments:

Aloha Representatives,

It's puzzling that those seeking less jail time for defndants are trying to pass a law to limit geographic restrictions which are a reasonable alternative to jail.

1. Geographic restrictions give an option for the defendant to chose to stay out of an area for a specific amount of time as part of their probation as an alternative to more jail time.
2. Geographic restrictions tend to keep people away from their "trouble zones" and are generally good for both the defendant and the community. It's like being banned from a bar for a certain period. Using a bar as an analogy, if a specific bar is a place where someone tends to get into trouble often, it's good for both the bar and the customer if a customer is banned.
3. I've been involved as a resident in the Waikiki Safe and Sound program for more than two years and can say that the geographic restrictions have made a dramatic difference in the community, reducing the number of troublemakers by close to 80%.
4. I watch the arrest logs daily and its extremely rare to see a defendant who is banned from Waikiki to get into constant trouble elsewhere. Waikiki is the source of drugs, alcohol and chaos and is not a helathy place for chronic troublemakers to hang out.

If this bill succeeds the alternative would be to ask for increased jail time for the prolific troublemakers rather than just having them agree to stay away from an area they don't live in or have any legitimate purpose to be in.

Mahalo,

John Deutzman

Waikiki