



The Judiciary, State of Hawai‘i

Testimony to the Thirty-Third Legislature, 2025 Regular Session

House Committee on Judiciary & Hawaiian Affairs

Representative David A. Tarnas, Chair

Representative Mahina Poepoe, Vice Chair

Friday, February 7, 2025 at 2:05 p.m.

State Capitol, Conference Room 325

By

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First Circuit, Acting Probation Administrator

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Fifth Circuit, Probation Administrator

Bill No. and Title: House Bill No. 892, Relating to Geographic Restrictions.

Purpose: Establishes limitations on geographical restrictions provided as a condition of probation.

Judiciary's Position:

The Judiciary supports House Bill No. 892 in establishing limitations for geographical restrictions provided as a condition of probation.

Geographical restrictions as a condition of probation have significant impacts 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 treatment, mental health



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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 take into account the resources and support of that individual and impact significant life areas such as family relationships, employment, social support, and treatment providers. Tailoring geographic restrictions to an individual's related criminal conviction takes into account 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 make reintegration into society more challenging.

Thank you for the opportunity to testify on House Bill No. 892.



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STATE OF HAWAI'I
OFFICE OF THE PUBLIC DEFENDER

HB 892 RELATING TO GEOGRAPHICAL RESTRICTIONS

Chair Tarnas, Vice Chair Poepoe, and Members of the Committee:

The Office the Public Defender **SUPPORTS HB 892.**

For this bill, the Office of the Public Defender (OPD) is taking the extraordinary step of reaching out to the legislature for guidance and clarity in the law in lieu of appealing a client's case to the Supreme Court. For years, the City and County of Honolulu Office of the Prosecutor has instituted geographical restrictions upon defendants in district court. 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 OPD understands the desire to keep certain portions of the island of Oahu low in minor crime for commercial or historic purposes. 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 defendant away from a place.

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 unfair deal than remain in custody awaiting trial. The OPD requests that the legislature enact a reasonable guardrail upon a practice that, at present, is clearly illegal.

DISTRICT COURTS HAVE FOUND 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 have been long and 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).

In addition to violating the above provisions of law, the ordinance violates explicit rights for residents and native Hawaiians as it bars the entrance onto land that is “undeveloped.” Many of the defendants who are being subjected to geographical restrictions are native Hawaiians, who are allowed, under state law, to “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 Westside” program is particularly egregious and 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 except for legitimate reasons with the prior approval of the Court.

If the Safe and Sound program is to continue, the legislature should put reasonable guardrails around its allowance.

Thank you for the opportunity to testify.

