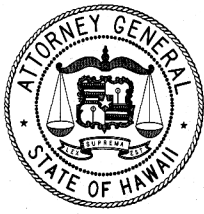


SB 2056

Measure Title:	RELATING TO HOMELESSNESS.
Report Title:	Executive Office on Homeless Identity Protection; Identification; Personal Property; Recovery
Description:	Protects 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.
Companion:	
Package:	None
Current Referral:	HMS/PSM, JDL
Introducer(s):	GREEN, CHUN OAKLAND, ESPERO, RUDERMAN, Shimabukuro, Wakai



TESTIMONY OF THE DEPARTMENT OF THE ATTORNEY GENERAL TWENTY-EIGHTH LEGISLATURE, 2016

ON THE FOLLOWING MEASURE:

S.B. NO. 2056, RELATING TO HOMELESSNESS.

BEFORE THE:

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

DATE: Tuesday, February 9, 2016

TIME: 1:15 p.m.

LOCATION: State Capitol, Room 016

TESTIFIER(S): Douglas S. Chin, Attorney General, or
Lila C. A. King, Deputy Attorney General

Chairs Chun Oakland 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. Below we have identified 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 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.” The “temporary” placement within the Office of the Governor does not meet the “temporary” constitutional requirement. The bill provision provides that the Executive Office on Homeless Identity Protection shall be a permanent office within the Department of Human Services; not a temporary office.

We previously opined in a formal Attorney General opinion that:

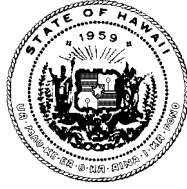
“[O]ffices” or other agencies created by law and not placed within a principal department of the state executive branch, “in such manner as to group the same according to common purposes and related functions,” are subject to attack as being invalidly placed in violation of the first sentence of the 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 may raise potential constitutional challenges that may invalidate that placement as a violation of 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 temporarily establishing that office in the Office of the Governor.

The Department urges the Committees to pass this bill only if these concerns are addressed.



STATE OF HAWAII
DEPARTMENT OF HUMAN SERVICES
P. O. Box 339
Honolulu, Hawaii 96809-0339

February 9, 2016

TO: The Honorable Senator Suzanne Chun Oakland, Chair
Senate Committee on Human Services

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

FROM: Rachael Wong, DrPH, Director

SUBJECT: **SB 2056 – RELATING TO HOMELESSNESS**

Hearing: Tuesday, February 09, 2016, 1:15 p.m.
Conference Room 016, State Capitol

DEPARTMENT'S POSITION: The Department of Human Services (DHS) opposes this measure and ask that the measure be deferred. The Department defers to state and county law enforcement agencies and the Department of Transportation regarding the issue of confiscation of personal property.

PURPOSE: The purpose of the bill is to protect homeless individuals from having their personal property taken without certain safeguards, including the ability to recover their property, and establish the executive office on homeless identity protection to assist homeless individuals with recovering government-issued identification documents.

By adding two sections to Chapter 346, Hawaii Revised Statutes (HRS), the measure proposes to, amongst other things, make it unlawful for any state or county agency to confiscate personal property, including government-issued identification, from a homeless individual unless the state or county agency 1) photographs the personal property; 2) takes a written personal statement from the homeless individual; and 3) catalogs and stores the personal property for later recovery. The bill creates the executive office on homeless identity protection within the

office of the Governor, establishes the director of the executive office on homeless identity protection to be appointed by the Governor. The office to be permanently attached to the Department of Human Services, for administrative purposes at some later unidentified date. The measure proposes that, amongst other things, (d) The office shall assist homeless individuals with the process of recovering personal property and government-issued identification documents that may have been confiscated by state or county agencies pursuant to section 346-A."[underscore in original]

The Department understands what the measure is trying to accomplish and acknowledges the complexity with removal and retrieval of personal property of homeless individuals and the difficulty homeless individuals encounter when trying to obtain and replace government issued identification (ID).

With regard to ID, last year the Legislature passed Act 243 (2015) (SB273/2015), which provided a statutory process by which a homeless individual may establish a principal address and request a fee waiver from the examiner of drivers to obtain an original or renewal ID card.

Act 243 also established "a working group to be placed in the department of human services for administrative purposes that shall conduct research and develop a plan to enable individuals in the State who are unable to produce documentation required for a state civil ID card to obtain satisfactory documentary evidence."

Amongst other things, the working group learned that the City & County of Honolulu and the Department of Transportation do not confiscate government identification of homeless individuals. Additionally, the City & County of Honolulu clarified the process in which it attempts to return or it holds government identification as it does with other found personal property. Recovering identification from a government agency does not require an office to be created.

Further, the working group learned that with the passage of the federal REAL ID ACT, Pub. L. 109-13, 119 Stat. 302 (2005), obtaining and maintaining REAL ID compliant ID requires individuals to possess and maintain their vital records to establish one's identity and principal address. Community providers that currently assist homeless individuals with obtaining ID reported that homeless individuals have difficulty obtaining certified copies of vital records that establish their identity because they lack the financial means and administrative skills to navigate multiple government, most often out-of-state and foreign country, systems and require civil legal services to assist with obtaining government ID.

After careful consideration of the information received, the working group made the following recommendations:

1. The Legislature should appropriate funds for necessary services, fees and costs associated with obtaining vital records, to assist citizens and lawfully present non-citizen homeless individuals with obtaining necessary documentation to obtain a State civil identification (ID) card.
2. Legislature should appropriate funds to conduct develop and implement a regular public outreach campaign to encourage individuals to obtain and maintain current government issued ID and vital records.

We recommend that the work group strategy is more operational and practical than the the actions the measure proposes. Further, there are both Senate and House bills that are proposing the Act 243 Work Group's recommendations.

Regarding the inventory and storage of personal property of homeless individuals, this proposal is far a field of the mission and programs of the Department of Human Services, and an office such as this should not be attached to the DHS for administrative purposes. The DHS is not a law enforcement agency, nor does it maintain personal property of individuals. Imposition upon the DHS of these added responsibilities would severely impact the Department's resources and ability to deliver public benefits and services to nearly 1 in 4 of Hawaii's residents.

Thank you for the opportunity to testify on this bill.

DAVID Y. IGE
GOVERNOR OF HAWAII



**STATE OF HAWAII
DEPARTMENT OF LAND AND NATURAL RESOURCES**

POST OFFICE BOX 621
HONOLULU, HAWAII 96809

**Testimony of
SUZANNE D. CASE
Chairperson**

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

**Tuesday, February 9, 2016
1:15 PM
State Capitol, Conference Room 016**

**In consideration of
SENATE BILL 2056
RELATING TO HOMELESSNESS**

Senate Bill 2056 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) opposes this bill on the basis that the Department has a duty to the general public to maintain public lands for their enjoyment. This bill has the potential to limit public access to some 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 almost impossible to remove homeless property and trash from state lands because it is unlikely that a homeless person would provide such a statement. The Department also believes the language provided in the bill is vague.

The Department notes that Hawaii Revised Statutes (HRS) Section 171-31.5, already establishes a process for the disposition of abandoned property on state land for all individuals, not just the homeless. HRS Section 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, which includes IDs or other personal records.

The Department recognizes that those who are homeless have a right to be treated with dignity, but must also balance homeless individuals' need for shelter with the general public's right to access public lands for their enjoyment. Allowing homeless encampments to remain on public lands can lead to problems with public safety, as well as hygiene and resource management problems.

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
BUREAU OF CONVEYANCES
COMMISSION ON WATER RESOURCE MANAGEMENT
CONSERVATION AND COASTAL LANDS
CONSERVATION AND RESOURCES ENFORCEMENT
ENGINEERING
FORESTRY AND WILDLIFE
HISTORIC PRESERVATION
KAHOOLAWE ISLAND RESERVE COMMISSION
LAND
STATE PARKS

Currently, the Department is fielding an average of five complaints per day from people who use Sand Island State Park and various parts of Diamond Head. Complaints range from unsightly litter to threatening behavior.

State agencies are working together with the State Homeless Coordinator to respond to homeless encampments on state property in ways that connect homeless individuals to shelters and housing, and do not just push homeless persons from one area of state land to another.

Homelessness is a complex societal issue that will take time and funding to address. Working through a single point of contact, such as the State Homeless Coordinator, will be more effective and efficient in the long run.

Thank you for the opportunity to testify on this measure.



Committee: Committee on Human Services
Committee on Public Safety, Intergovernmental, and Military Affairs
Hearing Date/Time: Tuesday, February 09, 2016, 1:15 p.m.
Place: Conference Room 016
Re: Testimony of the ACLU of Hawaii in Support of S.B. 2056, Relating to Homelessness

Dear Chair Chun Oakland, Chair Nishihara, and Members of the Committees:

The American Civil Liberties Union of Hawaii (“ACLU of Hawaii”) writes in support of S.B. 2056, which would require state and county agencies to follow proper procedure before seizing homeless individuals’ personal property, and would establish an entity to assist homeless individuals in recovery of their property.

Loss of personal property is a significant problem for homeless individuals in Hawaii. In the past, this has been especially prevalent following “sweeps” conducted by government officials, during which many unsheltered individuals’ personal identification was lost or taken. Without identification, homeless individuals have difficulty accessing shelter, applying for work, cashing checks, or applying for public benefits. Even when replacement is possible, however, the costs associated with replacing this identification create a substantial financial burden on homeless individuals and families, who often must choose between replacing their vital identification documents and purchasing food. Existing law and practices therefore perpetuate the cycle of poverty and lead to extended periods of homelessness, and S.B. 2056 would be a significant step in addressing these long-standing and difficult issues.

Thank you for the opportunity to testify.

Sincerely,

Daniel Gluck
Legal Director
ACLU of Hawaii

The mission of the ACLU of Hawaii is to protect the fundamental freedoms enshrined in the U.S. and State Constitutions. The ACLU of Hawaii fulfills this through legislative, litigation, and public education programs statewide. The ACLU of Hawaii is a non-partisan and private non-profit organization that provides its services at no cost to the public and does not accept government funds. The ACLU of Hawaii has been serving Hawaii for 50 years.

American Civil Liberties Union of Hawaii
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E: office@acluhawaii.org
www.acluhawaii.org

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

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

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

February 1, 2016

To: Senator Suzanne Chun Oakland, 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 SB 2056 RELATING TO HOMELESSNESS

Hawaii Youth Services Network, a statewide coalition of youth-serving organizations, supports SB 2056 Relating to Homelessness.

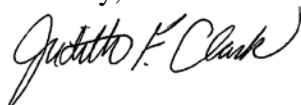
There are many creditable reports of homeless individuals who have lost essential identification during sweeps of homeless encampments and enforcement of the laws that forbid sitting, lying, or storing possessions on a sidewalk. This includes unaccompanied runaway and homeless youth who are living without 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.

Placing the responsibility for storing and returning identification in the Governor's office rather than in a law enforcement agency is a positive feature of the plan. Homeless persons would be less likely to retrieve their ID if they had to approach law enforcement personnel for that purpose.

Thank you for this opportunity to testify.

Sincerely,



Judith F. Clark, MPH
Executive Director

From: mailinglist@capitol.hawaii.gov
To: [HMS Testimony](#)
Cc: blawaiianlvr@icloud.com
Subject: Submitted testimony for SB2056 on Feb 9, 2016 13:15PM
Date: Monday, February 01, 2016 12:05:12 PM

SB2056

Submitted on: 2/1/2016

Testimony for HMS/PSM on Feb 9, 2016 13:15PM in Conference Room 016

Submitted By	Organization	Testifier Position	Present at Hearing
De MONT R. D. CONNER	Ho'omana Pono, LLC.	Support	No

Comments: We are in FULL SUPPORT for this common sense bill.

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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To: [HMS Testimony](#)
Cc: lynneronderko@gmail.com
Subject: *Submitted testimony for SB2056 on Feb 9, 2016 13:15PM*
Date: Tuesday, February 02, 2016 7:43:42 AM

SB2056

Submitted on: 2/2/2016

Testimony for HMS/PSM on Feb 9, 2016 13:15PM in Conference Room 016

Submitted By	Organization	Testifier Position	Present at Hearing
Lynn Onderko	Individual	Support	No

Comments:

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Cc: burgharc@gmail.com
Subject: Submitted testimony for SB2056 on Feb 9, 2016 13:15PM
Date: Monday, February 01, 2016 12:03:05 PM

SB2056

Submitted on: 2/1/2016

Testimony for HMS/PSM on Feb 9, 2016 13:15PM in Conference Room 016

Submitted By	Organization	Testifier Position	Present at Hearing
cheryl	Individual	Support	No

Comments: I have been there when people's things were taken and NO documentation was given..and even when they did who could follow or pay for the procedures. WE really need to be more humane about helping our houseless. The city and state owe the DOE so much for library and school books taken and never recovered.

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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