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TESTIMONY ON HOUSE BILL 87, SENATE DRAFT 1
RELATING TO PUBLIC SAFETY

Nolan P. Espinda, Director
Department of Public Safety

Senate Committee on Judiciary and Labor
Senator Gilbert S.C. Keith-Agaran, Chair
Senator Maile S.L. Shimabukuro, Vice Chair

Tuesday, March 31, 2015, 9:35 AM
State Capitol, Conference Room 016

Chair Keith-Agaran, Vice Chair Shimabukuro, and Members of the Committee:

The Department of Public Safety (PSD) **strongly supports** House Bill (HB) 87, Senate Draft (SD) 1, which would shield civil process servers from prosecution under criminal trespass statutes when making a good faith effort to perform their duties in instances when the property is not bordered by a physical barrier, e.g., a fence, or a locked gate. In these cases, the proposed change to the existing Trespass Statute would allow the civil process server to enter and serve the legal judgment without being subject to a criminal charge.

In addition, SD 1 amends HB 87 to make permanent the requirements of Act 116, Session Laws of Hawaii 2013, and includes the recommendations of the Civil Process Server Working Group which seek to improve the service of process in Hawaii.

Thank you for the opportunity to present this testimony.

DEPARTMENT OF THE PROSECUTING ATTORNEY
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THE HONORABLE GILBERT S.C. KEITH-AGARAN, CHAIR
SENATE COMMITTEE ON JUDICIARY AND LABOR
Twenty-Eighth State Legislature
Regular Session of 2015
State of Hawai'i

March 31, 2015

RE: H.B. 87, S.D. 1; RELATING TO PUBLIC SAFETY

Chair Keith-Agaran, Vice-Chair Shimabukuro and members of the Senate Committee on Judiciary and Labor, the Department of the Prosecuting Attorney of the City and County of Honolulu, submits the following comments regarding H.B. 87, S.D. 1.

While the Department appreciates the intent of this bill, and agrees that it is important for both civil and criminal process servers to be able to do their jobs, the Department is not aware of any cases in which individuals have been arrested or prosecuted for legitimate attempts to serve process, as such individual would not be on a premises “unlawfully”—the existing standard for an offense of criminal trespass—so long as they abide by all applicable laws and rules for service of process. The Department notes that other individuals who enter private property lawfully—such as law enforcement officers, public utility employees, and others acting in the course and scope of their duties—also do not require an express exemption. Should the Legislature choose to enact express exemptions for certain individuals who are lawfully on premises, this may raise concerns that other individuals lawfully on premises are not exempt. Moreover, because anyone over the age of eighteen can serve process, this may create or increase a risk of abuse, by those who may attempt to utilize such an exception to harass or stalk another.

Pursuant to Rule 4(c) of the Hawaii Rules of Civil Procedures (“HRCP”), Rule 4(c) of the District Court Rules of Civil Procedure (“DCRCP”), and Rule 4(c) of the Hawaii Family Court Rules (“HFCR”), service of a complaint may be made, in short, “by any person who is not a party and is not less than 18 years of age,” between the hours of 6:00 a.m. and 10:00 p.m., on any premises open to the public. Because service must be made to the named individual or to someone of suitable age and discretion at the named individual’s dwelling (HRCP, DCRCP, and HFCR Rule 4(d)(1)), it is possible for a person serving a complaint to go to a person’s dwelling numerous times, on a regular basis, attempting to come face-to-face with an individual who

could receive the document. Thereafter, pursuant to HRCRCP, DCRCP, and HFCR Rule 5(a), “[e]very order required by its terms to be served, every pleading subsequent to the original complaint unless the court otherwise orders because of numerous defendants, every paper relating to discovery required to be served upon a party unless the court otherwise orders, every written motion other than one which may be heard ex parte, and every written notice, appearance, demand, brief or memorandum of law, offer of judgment, bill of costs, designation of record on appeal, and similar paper shall be served” and such service must be made on each party unless such party has an attorney.

Truly, the Department does understand that individuals who are legitimately serving process—even those employed by our own Department—sometimes face disgruntled and/or confrontational persons, in the course of obeying Hawaii’s legal requirements to serve process. However, similar difficulties may be faced by public utility employees or other individuals who lawfully enter the private property of another, and if all legal requirements are followed, the Department does not believe that such actions constitute an offense even under the current language of Criminal trespass in the first or second degree. The Department is very wary of creating express exemptions in statute, when there is no question that such individuals—acting lawfully—do not come under the language of the offense as-is.

For all of the foregoing reasons, the Department asks the Committee to carefully consider whether express exemptions must to be added to these statutes—for a class of individuals that could essentially include anyone—when such exemptions are not currently necessary for someone to lawfully serve process, and other persons who lawfully enter private property also do not have express exemptions carved-out for them. Thank for you the opportunity to submit comments on H.B. 87, S.D. 1.



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March 29, 2015

Senator Gilbert S.C. Keith-Agaran, Chair
Senator Maile S.L. Shimabukuro, Vice-Chair
Senate Judiciary Committee

Re: HB 87, SD 1 Relating to Public Safety
Hearing: March 31, 2015, 9:35 a.m.
Testimony in Support, With Comments

Dear Chair, Vice-Chair, and Members of the Committee:

This testimony is being submitted on behalf of the Collection Law Section of the Hawaii Bar Association (“CLS”).¹ The CLS strongly supports the continued authority for the Department of Public Safety (“DPS”) to maintain a list of civil process servers and supports the protections regarding criminal trespass for civil process servers, however two very important points need to be addressed within the bill.

1. The bill must not interrupt the current authorized list of civil process servers by DPS. The list is essential for the service of literally hundreds to possibly a thousand documents or more each month. As written, HB 87, SD 1 contains requirements for training and bonding/insurance, however there is no detail as to what is “training,” who will be authorized to provide this “training,” and how much is needed. Additionally, there is no time period in place for individuals to get the training without first being dropped from the list. Likewise, there is no detail as to how much the bond or insurance policy limits should be, what is to be covered, who is the beneficiary of the bond or the insurance policy (the state or the client, or person being served, or ??), whether instate or out of state carriers will be allowed, and other details concerning the implementation of such a requirement. While the CLS section takes no position at this time as whether the above requirements, in any form, should or should not be part of state policy, the CLS does want to point out that the current language is not only vague, but it would most certainly cause there to be a gap to occur wherein there would be no civil process servers qualified to serve documents for the public, the state, the counties, or the courts. Even a gap of one month would be a huge problem.

¹ *The comments and recommendations submitted reflect the position/viewpoint of the Collection Law Section of the HSBA. The position/viewpoint has not been reviewed or approved by the HSBA Board of Directors, and is not being endorsed by the Hawaii State Bar Association.*

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2. If protections are going to be given to process servers, then those protections should include coverage for all the types of documents process servers serve. As HB 87 is currently written, only the service of “process” is included. “Process” is a legal term that is sometimes subject to different interpretation, but most often includes a summons. “Process” however, may not necessarily include court orders, subpoenas, notices, warrants, writs, judgments, and other documents.

Thank you.

Respectfully,

/S/ William J. Plum

William J. Plum
Vice-Chair
Collection Law Section of the HSBA

cc: Steven Guttman
Patricia A. Mau-Shimizu

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From: mailinglist@capitol.hawaii.gov
To: [JDLTestimony](#)
Cc:
Subject: Submitted testimony for HB87 on Mar 31, 2015 09:35AM
Date: Monday, March 30, 2015 12:40:49 PM

HB87

Submitted on: 3/30/2015

Testimony for JDL on Mar 31, 2015 09:35AM in Conference Room 016

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

Comments: Aloha, My name is Bob Dukat. I am an officer of Pyramid Process, Pahoehoe, HI. This bill should be passed, as private process servers often encounter no trespass signs and no entry signs, when attempting to complete service of process. We have no protection from the law for being arrested under the current trespass laws. Thank you Bob Dukat

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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