



The Judiciary, State of Hawaii

**Testimony to the
Senate Committee on
Public Safety, Intergovernmental and Military Affairs**
Senator Clarenc K. Nishihara, Chair
Senator Will Espero, Vice Chair
and
Senate Committee on Judiciary and Labor
Senator Gilbert S.C. Keith-Agaran, Chair
Senator Maile S.L. Shimabukuro, Vice Chair

Wednesday, February 10, 2016, 8:30 a.m.
State Capitol, Conference Room 016

By
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Bill No. and Title: Senate Bill No. 2179, Relating to Drug Paraphernalia

Purpose: Changes drug paraphernalia possession and delivery offenses from felonies to civil violations.

Judiciary's Position:

The Judiciary takes no position on the merits of Senate Bill No. 2179, however the Judiciary is concerned about how it will process a new and distinct case type called a "civil violation." Currently, the District Court processes certain traffic cases as civil in nature, and these "civil infractions" are adjudicated pursuant to Hawaii Revised Statutes (HRS), Chapter 291D. There is no similar court procedure for processing a criminal case as civil in nature. However, the purpose of this bill may be achieved without the necessity of creating a "civil violation." There is already a category of offense for which no jail can be imposed. HRS Section 701-107 (5) provides that:

(5) An offense defined by this Code or by any other statute of this State constitutes a violation if it is so designated in this Code or in the law defining the offense or if no other sentence than a fine, or fine and forfeiture or other civil penalty, is authorized upon conviction or if it is defined by a statute other than this Code, which provides that the offense shall not constitute a crime. **A violation does not constitute a crime,**

and conviction of a violation shall not give rise to any civil disability based on conviction of a criminal offense. (Emphasis added)

Although a violation does not constitute a crime, it constitutes a penal offense. These cases would be processed through the courts in the same manner as a crime. A defendant would be required to appear in court, be arraigned, enter a plea, and if found guilty, be sentenced. The District Courts would prefer to process these cases as violations with its current procedures.

If the Legislature decides to create a "civil violation"-- as opposed to a violation under the Hawaii Penal Code-- and envisions that it be processed in the same manner as a civil traffic infraction under Hawaii Revised Statutes Chapter 291D, it will be necessary to enact a statutory framework for the processing of such cases. As it did when Chapter 291D was implemented, the District Courts would be required to create new forms, schedule civil violation calendar sessions and train staff to process these cases. The Judiciary would also need to create a new case type, change codes in the Judiciary Information Management System (JIMS) and create new processing requirements. It is estimated that this undertaking would take approximately 6-7 months for design, development and testing at a cost of about \$850,000. Considering all these things, the Judiciary requests that the effective date be changed to no earlier than January 1, 2018 to accommodate the need for these changes.

Thank you for the opportunity to testify on Senate Bill No. 2179.