

**LATE TESTIMONY**



**Office of the Public Defender  
State of Hawaii**



**Timothy Ho, Chief Deputy Public Defender**

Testimony of the Office of the Public Defender,  
State of Hawaii to the Senate Committee on Judiciary and Labor

February 24, 2011, 9:00 a.m.

RE: **S.B. 643**, SD1: Relating To Excessive Speeding

Chair Hee and Members of the Committee:

We understand the public's interest in highway safety, however, §291C-105(c), excessive speeding, is a bad law and should be repealed. We **oppose** Senate Bill 643, SD1.

Proponents of the excessive speeding law touted this legislation as an easier way to target highway racing. They argued that rather than have to prove that at least two people were engaged in a speed contest with each other, all they would have to prove was that one person was driving more than thirty miles over the posted speed limit, or that he was driving faster than eighty miles per hour. However, the application of this law not only to racers, but to everyone unfortunate to be caught in a "speed trap", and the harsh, progressive penalty scheme and SR-22 requirement has led to unintended results.

This law has had the direct effect of adding over a thousand cases to the caseload of our attorneys in our misdemeanor and traffic section. The majority of our clients charged with excessive speeding were not "racing" on our freeways, but were caught in areas where the speed limit changed from 55 miles per hour to 35 miles per hour. Areas like the interchange between the airport viaduct and the H-1 freeway heading east, or the Waipio Gentry off-ramp heading south are common excessive speeding "traps". Most people associate our office with representing indigents charged with criminal offenses. Surprisingly, the vast majority of our district clients come to us facing traffic offenses.

Most of our clients charged with excessive speeding are not racers, but grandmothers and grandfathers, hard working individuals young and old, who have had no prior experience with our judicial system. The progressive sentencing scheme of this charge eliminates the possibility of a deferred acceptance of a guilty plea. The SR-22 requirement and license suspension has led to court congestion as more people have chosen to contest their cases in order to avoid the harsh penalties imposed by this offense.

We propose a decriminalization of the first offense, along with the license suspension and SR-22 waiver. This would have the immediate effect of reducing our district court caseload, and reduce court congestion. Most people would

enter guilty pleas at their first appearance if these changes were made. Furthermore, the progressive sentencing scheme should be eliminated, which would permit defendants to ask the court for an opportunity to defer their guilty or no contest pleas. In the alternative, language should be inserted in (c)(1) as follows: "For the first offense, where the court has not deferred further proceedings pursuant to chapter 853." The proposed language would allow first-time offenders to defer their pleas, which would also eliminate the SR-22 requirement.

We also oppose the forfeiture of motor vehicles for repeat offenders. The Honolulu Police Department has repeatedly come out against legislation requiring them to store forfeited vehicles. Vehicle forfeiture has become an expensive headache for police departments on the mainland, especially urban police forces, where the cost of storing vehicles is high. An individual who is caught for excessive speeding three times in five years is not someone who is driving legally. This person most likely will not have a license, insurance or a properly registered automobile. Forfeiting the vehicle they were driving will mean the forfeiture of someone else's vehicle, a friend or relative's car.

For the reasons stated above, we oppose S.B. 643. Thank you for the opportunity to comment on this bill.

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