



**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**

March 14, 2013 2:00 p.m.

**LATE**

S.B. No. 442, SD1: RELATING TO INTOXICATING LIQUOR

Chair Rhoads and Members of the Committee:

This measure would reduce the state of mind required for a conviction of promoting intoxicating liquor to a minor from “knowingly” to “recklessly”. The proponents of this measure have submitted testimony in support of a reckless state of mind in order to make this offense easier to prove.

Our office has grave concerns about ever making criminal offenses easier to prove. A high standard of proof exists because our society places a premium on our fundamental right to liberty. This is a slippery path that we hope this legislature treads on very carefully.

Is there a demonstrated need to reduce the proof to a reckless state of mind? Have you been presented with statistics which establish an impossibility to convict anyone of this offense? In other words, is there any proof that the law as it is currently written is defective?

The restaurant and bar business can be hectic at times. Errors are made not only with the verification of the age of a customer ordering alcoholic drinks, but also with food orders being misplaced and/or mistaken. In this instance, a person is guilty of promoting intoxicating liquor to a minor if they had knowledge of the existence of that fact. A reckless person would have disregarded the risk that someone might be under the age of twenty-one. This state of mind would also apply to homeowners and hosts of private parties.

We do not believe that there is anything wrong with the law as it is currently written, and therefore oppose S.B. 442, SD1. Thank you for the opportunity to provide input on this measure.



DEPARTMENT OF THE PROSECUTING ATTORNEY  
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CONTACT: RICHARD. K. MINATOYA  
Deputy Prosecuting Attorney  
Supervisor, Appellate, Asset Forfeiture and Administrative Services Division

TESTIMONY  
ON  
SB 442, SD 1 - RELATING TO INTOXICATING LIQUOR

March 14, 2013

The Honorable Karl Rhoads  
Chair  
The Honorable Sharon E. Har  
Vice Chair  
and Members  
House Committee on Judiciary

Chair Rhoads, Vice Chair Har and Members of the Committee:

The Department of the Prosecuting Attorney, County of Maui, SUPPORTS SB 442, SD 1, Relating to Intoxicating Liquor, WITH AMENDMENTS.

SB 442, SD 1, amends HRS § 712-1250.5 by reducing the state of mind element from "knowingly" to "recklessly," and amends HRS § 281-78 to provide that any liquor licensee or employee who sells, serves,, or furnishes liquor to a minor or allows a minor to consume liquor shall be guilty of HRS § 712-1250.5. This will address the problem of minors having access to alcohol. During compliance sweeps, we found that licensees do not check minors' identification, and then are found not guilty under HRS § 712-1250.5 because the current state of mind in HRS § 712-1250.5 is "knowingly." In order to satisfy the proposed state of mind change, a person selling, serving or furnishing liquor would have to, at the very least, check a customer's identification to verify the customer's date of birth. The result will be increased compliance with liquor laws, increased safety on our streets, and increased protection of our youths.

We request that the bill be amended by deleting Section 1, involving amendments to HRS § 281-78. After discussions between various agencies, the consensus was that Section 1 was confusing and unnecessary for the purposes of this bill.

We ask that the committee PASS SB 442, SD 1 with AMENDMENTS.

Thank you very much for the opportunity to provide testimony on this bill.

POLICE DEPARTMENT  
**CITY AND COUNTY OF HONOLULU**

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OUR REFERENCE **JP-YZ**

March 14, 2013

The Honorable Karl Rhoads, Chair  
and Members  
Committee on Judiciary  
State House of Representatives  
Hawaii State Capitol  
415 South Beretania Street  
Honolulu, Hawaii 96813

Dear Chair Rhoads and Members:

Subject: Senate Bill No. 442, S.D. 1, Relating to Intoxicating Liquor

I am J Pedro, Acting Major of the Community Affairs Division, Honolulu Police Department (HPD), City and County of Honolulu.

The HPD supports Senate Bill No. 442, S.D. 1, Relating to Intoxicating Liquor, which reduces the state of mind of the perpetrator from "knowingly" to "recklessly" for the offense of promoting intoxicating liquor to a person under the age of 21.

This bill will ease the burden of proof in prosecuting these offenses. Successful prosecution of these offenses will further encourage licensees and servers to avoid serving intoxicating liquor to persons under the age of 21.

Thank you for the opportunity to testify in support of Senate Bill No. 442, S.D. 1.

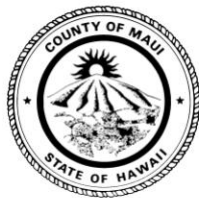
Sincerely,

  
J PEDRO, Acting Major  
Community Affairs Division

APPROVED:

  
LOUIS M. KEALOHA  
Chief of Police

ALAN M. ARAKAWA  
MAYOR



FRANKLYN L. SILVA  
DIRECTOR

TRACI FUJITA VILLAROSA  
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March 12, 2013

Re: Support of SB442, SD1 (SSCR 529)

Honorable Chair Karl Rhoads and Committee on Judiciary:

The County of Maui, Department of Liquor Control and the City & County of Honolulu Liquor Commission support SB442. We also support the deletion of Section 1 of SB442. The deletion of Section 1 does not affect the purpose of the bill which is to clarify that a person commits the offense of promoting intoxicating liquor to a person under the age of twenty-one if the person recklessly sells, serves, delivers, or gives liquor to a minor.

Traci Fujita Villarosa, Deputy Director  
Department of Liquor Control  
County of Maui

Anna Hirai, Acting Administrator  
Liquor Commission  
City & County of Honolulu



THE LIBERTARIAN PARTY OF HAWAII  
C/O 1658 LIHOLIHO ST #205  
HONOLULU, HI 96822

TESTIMONY

To The House Committee on Judiciary

RE: SB442, SD1

To be heard Thursday, March 14, 2013 at 2PM in Room 325

Dear Sirs:

**We oppose this bill. It is unconstitutionally vague.**

Without a clear and unambiguous definition of “recklessly” this law will prove legally unenforceable. In drafting law particularly criminal law we urge the legislature to pay attention to the details and not simply support bills that are recklessly written because the goals sound good politically.

The Libertarian Party has no agreed position on underage drinking, but the majority of us seem to feel we were fine for more than a decade with an 18 year old drinking age and the legislature has never provided a coherent rationale for it being 21.

Very Truly Yours:



Tracy Ryan

Vice Chair, The Libertarian Party of Hawaii

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