



**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 22, 2013 11:30 a.m.

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

Chair Hee 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 would be 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.

ALAN M. ARAKAWA
Mayor



JOHN D. KIM
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TESTIMONY
ON
SB 442, SD 1 - RELATING TO INTOXICATING LIQUOR

February 22, 2013

The Honorable Clayton Hee
Chair
The Honorable Maile S. L. Shimabukuro
Vice Chair
and Members
Senate Committee on Judiciary and Labor

Chair Hee, Vice Chair Shimabukuro and Members of the Committee:

The Department of the Prosecuting Attorney, County of Maui, is in STRONG SUPPORT of SB 442, SD 1, Relating to Intoxicating Liquor.

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 ask that the committee PASS SB 442, SD 1.

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



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GARY A. YABUTA
CHIEF OF POLICE

CLAYTON N.Y.W. TOM
DEPUTY CHIEF OF POLICE

February 22, 2013

The Honorable Clayton Hee, Chair
And Members of the Committee on Judiciary and Labor
The Senate
State Capitol
Honolulu, Hawaii 96813

RE: SB 442, SD1, RELATING TO INTOXICATING LIQUOR.

Dear Chair Hee and Members of the Committee:

The Maui Police Department supports the passage of SB 442, SD1.

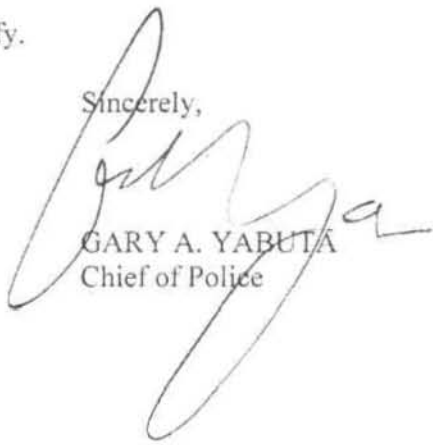
The passage of this bill amends the misdemeanor offense of promoting intoxicating liquor to a person under age 21 to apply to persons who recklessly, rather than knowingly, commit the offense. This bill applies the offense to liquor licensees, who provide liquor to any minor, or allow a minor to consume liquor.

The Maui Police Department is in support of clarifying this law to prevent the promoting of intoxicating liquor to a person under age 21. The law's proposed amendment will change the level of intent to satisfy the elements of this law from knowingly to recklessly, and we believe that it will help increase compliance with the law and ultimately help to protect the youth of our community.

The Maui Police Department asks that you support the passage of SB 442, SD1.

Thank you for the opportunity to testify.

Sincerely,


GARY A. YABUTA
Chief of Police