TESTIMONY OF
THE DEPARTMENT OF THE ATTORNEY GENERAL
TWENTY-SEVENTH LEGISLATURE, 2013

ON THE FOLLOWING MEASURE:
S.B. NO. 642, H.D. 1, RELATING TO HEALTH.

BEFORE THE:
HOUSE COMMITTEES ON CONSUMER PROTECTION AND COMMERCE AND ON JUDICIARY

DATE: Monday, March 25, 2013 **TIME:** 2:20 p.m.

LOCATION: State Capitol, Room 325

TESTIFIER(S): David M. Louie, Attorney General, or
Blair Goto, Deputy Attorney General, or
Lance M. Goto, Deputy Attorney General, or
Earl R. Hoke, Jr., Deputy Attorney General, or
Richard W. Stacey, Deputy Attorney General

Chairs McKelvey and Rhoads and Members of the Committees:

The Department of the Attorney General appreciates the intent of Part I of this bill in trying to reduce the number of youth who use tobacco products. However, we are concerned that Part I would hinder enforcement of the tax stamp laws with respect to cigarettes. In addition, we strongly oppose Part II because it would make enforcement of the medical marijuana program problematic.

The purpose of Part I of this bill is to add a new section to chapter 328J, Hawaii Revised Statutes, that would require that cigarettes or tobacco products be sold, permitted to be sold, offered for sale, or displayed for sale only in a direct, face-to-face exchange between the retailer and the consumer.

The purpose of the newly added Part II of this bill, which is similar to House Bill No. 667, H.D. 2, is to expand the medical marijuana program, allowing easier distribution of marijuana between qualifying patients and primary caregivers, allowing qualifying patients from other jurisdictions easily to obtain and use marijuana in Hawaii, altering the definition of "adequate supply" from one ounce to five ounces of usable marijuana, adding the definition of "reimbursement" to include compensation to primary caregivers, increasing the number of qualifying patients per primary caregiver from one to three, creating a limit of no more than twenty-eight marijuana plants located at a single property, limiting the information to appear on

the registry card to keep the location of where marijuana is grown confidential, and clarifying that the prescribing physician need not be the primary care physician. In addition, this bill references, but does not effectuate, a transfer of the administration of the program from the Department of Public Safety (PSD) to the Department of Health (DOH), which transfer is proposed in House Bill No. 668, H.D. 2, S.D. 1.

As to Part I of this bill, the Department of the Attorney General remains concerned that the wording could be interpreted in a manner that would hinder enforcement of the tobacco stamp tax laws. Section 2, on page 2, lines 19-22, requires that a retailer not "sell, permit to be sold, offer for sale, or display for sale any cigarettes or tobacco products except only in a direct, face-to-face exchange between the retailer and the consumer." It is unclear how a retailer is to offer for sale or display for sale cigarettes or tobacco products only in a face-to-face exchange. The phrase could be interpreted to require that cigarettes and tobacco products must be stored out of sight in an area accessible only to employees of the business and brought out and shown to potential customers only upon request. To eliminate the ambiguity, we recommend the deletion of "offer for sale, or display for sale" on lines 19-20 and the insertion of "or" on line 19 to read: ". . . sell[~~,~~] or permit to be sold[~~,~~] any cigarettes or tobacco products except only in a direct, face-to-face exchange between the retailer and the consumer." Historically, those who wished to evade the payment of cigarette taxes often stored the noncompliant product in back areas or under counters that were not readily visible to those tasked with investigating contraband cigarette sales. By requiring that cigarettes and tobacco products be offered for sale or displayed for sale only in a face-to-face exchange, Part I will, unintentionally, facilitate the sale of untaxed, contraband cigarettes. Making the recommended amendment would address the enforcement concerns that the Department of the Attorney General has with Part I.

As to what is now Part II, this bill expands the medical marijuana program in ways that will make it extremely difficult for program administrators and law enforcement to ensure that the law is followed. We strongly oppose Part II of this measure for the following reasons:

1. This bill, by making distribution between multiple primary caregivers and qualifying patients much easier, and by increasing the number of patients per caregiver from one to three, and making it harder to determine where medical marijuana is being grown, will make it much more difficult to ensure compliance

with the medical marijuana program, and much more difficult for law enforcement agencies to determine when a crime is being committed.

2. Marijuana is still a schedule I controlled substance under federal law. It is in violation of federal law to grow, distribute, or use marijuana. Although this bill could legalize conduct that is currently prohibited under state law, federal law cannot be ignored. Federal law enforcement agencies make arrests and conduct raids on medical marijuana operations in other jurisdictions.

The Department has additional concerns about other provisions of this bill.

First, in section 7, page 9, line 7-10, this bill provides:

> The form may request the address of the location where the marijuana is grown, but that information shall be **confidential** and shall not appear on the registry card issued by the department of health.

(Emphasis added). As the term "confidential" is not defined, it is not clear who would have access to that information, and who would not.

Second, in section 7, page 9, at lines 10-14, this bill provides that the physician issuing the written certification shall only attest that the patient has a debilitating medical condition, but shall not identify the condition. The attestation requirement appears to prevent the registering authority from identifying the debilitating medical condition and confirming that the patient qualifies under the law for medical marijuana.

If this bill were passed, it would be extremely difficult to regulate and control the medical marijuana program, which was carefully tailored by legislation to reduce the chances of abuse.

Accordingly, due to the enforcement issues with Part II, we respectfully ask the Committees to delete Part II of this bill. In addition, if the bill is to advance, we respectfully ask the Committees to pass this bill with the recommended amendment to Part I.

NEIL ABERCROMBIE
GOVERNOR

STATE OF HAWAII
DEPARTMENT OF PUBLIC SAFETY
919 Ala Moana Blvd. 4th Floor
Honolulu, Hawaii 96813

TED SAKAI
DIRECTOR

Martha Torney
Deputy Director
Administration

Max Otani
Deputy Director
Corrections

Keith Kamita
Deputy Director
Law Enforcement

No. _____

TESTIMONY ON SENATE BILL (SB) 642, HOUSE DRAFT (HD) 1
A BILL FOR AN ACT RELATING TO HEALTH
By
Ted Sakai, Director
Department of Public Safety

House Committee on Consumer Protection and Commerce
Representative Angus L.K. McKelvey, Chair
Representative Derek S.K. Kawakami, Vice Chair

House Committee on Judiciary
Representative Karl Rhoads, Chair
Representative Sharon E. Har, Vice Chair

Monday, March 25, 2013, 2:20 p.m.
State Capitol, Room 325

Chairs McKelvey and Rhoads, Vice Chairs Kawakami and Har, and Members of the Committees:

The Department of Public Safety (PSD) **does not support SB 642, HD1**, which would require cigarettes and tobacco products to be sold, offered for sale, or displayed only in a direct, face-to-face exchange between the retailer and the consumer. SB642, HD1 amends aspects of the medical use of marijuana program by:

- Increasing the authorized number of a patient's marijuana plants from 4 immature and 3 mature and up to 3 ounces of usable marijuana to seven mature plants and five ounces of usable marijuana a significant increase.
- Changing the patient to caregiver ratio from one patient per caregiver to three patients per caregiver;
- Allowing for a caregiver to charge a patient for costs associated with assisting that qualifying patient to obtain marijuana for medical use;

- Authorizing the transfer of marijuana between other patients and caregivers;
- Immunizing patients from searches, seizures and prosecution while transporting marijuana intended for medical use;
- Authorizing patients from other states to use medical marijuana while in Hawaii;
- Clarifying that a certifying physician need not be a patient's primary care physician;
- Prohibiting the state from indicating on the registry card the location where the qualified marijuana plants are grown.

PSD envision that passage of this bill will create difficulties for law enforcement. Imagine the following scenario:

> A house in which three medical marijuana patients reside (and this is not uncommon) currently could have 21 plants and 15 ounces of useable marijuana. The law now allows patients to be caregivers to one other patient. Under this bill each patient could be a caregiver for 3 other patients. This would potentially allow each patient/caregiver to grow up to 28 plants and possess up to 20 ounces of useable marijuana. If each of the three patients were also caregivers to three other patients, then the one house could legally grow up to 84 plants and possess up to 60 ounces of marijuana. Such a situation would draw the attention of law enforcement officials. However, job of law enforcement would be made difficult by the provision that prohibits the state from indicating on the registration card the location where the qualified marijuana is grown.

Because the authorized location of marijuana plants would not be on the permit, there would be a tremendous strain on the law enforcement officers and the DOH, if the DOH to conduct verifications twenty-four hours per day, seven days per week. One potential result is that a patient's marijuana plants may be seized unnecessarily. The advantage of having the patient or caregiver's authorized grow location is that when a law enforcement officer is called to a residence and

finds marijuana plants, the patient or caregiver can just present his or her medical use of marijuana permit and the officer will at a glance be able to verify that the plants are authorized and leave. If this information is not on the permit, the law enforcement officer will have to contact DOH for every permit.

The need for such verifications constitutes a large part of the program's administration. In FY 2012, PSD conducted 950 medical marijuana verification checks for Federal, State, and County law enforcement agencies. We received numerous verification calls resulting in an individual being released without arrest or seizure of their plants due to the ability of law enforcement officer to contact our Narcotics Enforcement Division 24 hours a day, 7 days a week to verify a patient or caregiver's medical use of marijuana certificate status. Each check may take up to 15 minutes.

There are other aspects of this bill that cause serious concern for us. For example, the section that would allow persons visiting from other states to use medical marijuana is also problematic, as we do not have the means to determine that a registry identification card is valid. If it is the sentiment of this Legislature to permit qualified visitors to use medical marijuana while in Hawaii, then we suggest that the various states consider reciprocal agreements first.

For these reasons, PSD cannot support SB642, HD1 as written. We do support other legislation that would transfer responsibility for this program to the department of Health. We believe that this transfer should take place first in an orderly manner, before other aspects of the law are amended.

Thank you for the opportunity to testify on this matter.

DEPARTMENT OF THE PROSECUTING ATTORNEY

CITY AND COUNTY OF HONOLULU

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THE HONORABLE ANGUS L.K. MCKELVEY, CHAIR
HOUSE COMMITTEE ON CONSUMER PROTECTION & COMMERCE
THE HONORABLE KARL RHOADS
HOUSE COMMITTEE ON JUDICIARY
Twenty-Seventh State Legislature
Regular Session of 2013
State of Hawai`i

March 25, 2013

RE: S.B. 642, H.D. 1; RELATING TO HEALTH.

Chair Au McKelvey, Chair Rhoads, and members of the House Committee on Consumer Protection & Commerce, and House Committee on Judiciary, the Department of the Prosecuting Attorney of the City and County of Honolulu submits the following testimony in opposition to S.B. 642, H.D. 1.

The purpose of this measure is to: allow transfer of medical marijuana between all registered qualifying patients and caregivers; increase the amount of usable marijuana permitted per patient and caregiver; make the location of a patient's medical marijuana supply confidential, and omit this information from his or her registry card; prohibit the Department of Public Safety from knowing the patient's qualifying medical condition or requiring that a patient's certifying physician be the primary care physician; and allow caregivers to be responsible for up to three qualifying patients at any given time.

Because marijuana continues to be a Schedule I controlled substance (on both State and Federal schedules), possession of any amount is illegal, except by qualifying patients registered to use medical marijuana (and their caregivers). Such patients are currently permitted to have up to three ounces of usable marijuana at a time; one ounce is approximately 28.3 grams.

Under S.B. 642, H.D. 1, a caregiver with three registered patients could be permitted to possess and/or transfer up to 21 marijuana plants and 15 ounces (nearly 1 pound) of usable marijuana at any given time. To deter potential abuse and negative impacts on the public, permitted amounts and number of patients per primary caregiver should be kept to a minimum;

strict regulations should be maintained to facilitate effective enforcement and control of this highly controlled substance.

Along similar lines, it is also important for law enforcement officers to be able to assess the amount of medical marijuana someone has in their possession, even if that person is registered as a qualified medical marijuana patient. Also, law enforcement must be able to readily identify the correct location of a patient's medical marijuana supply, and the Department of Public Safety (or Department of Health, if applicable) should have assurances that medical marijuana certifications are issued by a patient's primary care physician, for a specified medical condition. To do otherwise would permit or even encourage widespread abuse of the medical marijuana laws and marijuana usage.

While there has been ongoing discussion about the physical effects of marijuana, the Federal Schedule of controlled substances was recently updated in September 2012, and continues to list marijuana as a Schedule I controlled substance. Due to ongoing demand for illegal marijuana—either by non-registered individuals and/or in excess quantities—the Department maintains that medical marijuana laws must be very narrowly and carefully crafted, such that they can be safely and effectively enforced.

For the foregoing reasons, the Department of the Prosecuting Attorney of the City and County of Honolulu opposes the passage of S.B. 642, H.D. 1. Thank you for this opportunity to testify on this matter.

American Cancer Society
Cancer Action Network
2370 Nu`uanu Avenue
Honolulu, Hawai`i 96817
808.432.9149
www.acscan.org

House Committee on Protection and Commerce
Representative Angus McKelvey, Chair
Representative Derek Kawakami, Vice Chair

House Committee on Judiciary
Representative Karl Rhoads, Chair
Representative Sharon Har, Vice Chair

Hearing: March 25, 2013; 2:20 p.m.

SB 642, HD1 - RELATING TO HEALTH

Cory Chun, Government Relations Director – Hawaii Pacific
American Cancer Society Cancer Action Network

Thank you for the opportunity to testify in support of part 1 of SB 642, HD1, which requires tobacco products for sale to be sold only in a face-to-face interaction in certain establishments. We take no position on part 2 of this measure.

The American Cancer Society Cancer Action Network (ACS CAN), the advocacy affiliate of the American Cancer Society, is the nation's leading cancer advocacy organization. ACS CAN works with federal, state, and local government bodies to support evidence-based policy and legislative solutions designed to eliminate cancer as a major health problem.

This version attempts to achieve the goals of the original measure, while taking into account logistical and practical challenges raised by the Attorney General. We believe this is a reasonable compromise.

Thank you for the opportunity to provide testimony on this measure.

Committee:	Committee on Consumer Protection & Commerce Committee on Judiciary
Hearing Date/Time:	Monday, March 25, 2013, 2:20 p.m.
Place:	Conference Room 325
Re:	*Testimony of the ACLU of Hawaii in Support of S.B. 642, H.D.1, Part II, Sec. 3, Relating to Health*

Dear Chairs McKelvey and Rhoads and Members of the Committees:

The American Civil Liberties Union of Hawaii ("ACLU of Hawaii") writes in support of S.B. 642, H.D.1, Part II, Sec. 3, which provides a number of important and necessary improvements to the medical marijuana program.

S.B. 642 is a sensible measure that will provide long overdue relief to sick patients. Contemporary scientific evidence confirms the countless stories of the therapeutic effects of medical marijuana, which has provided unique relief for serious conditions, including cancer and AIDS, when no other medicine is as effective or free of side effects such as nausea or loss of appetite. Nearly one million patients nationwide now use medical marijuana as recommended by doctors and in accordance with state laws. Unfortunately, Hawaii's medical cannabis program is flawed; S.B. 642 will go far towards alleviating the problems faced by current patients.

S.B. 642 may spare patients who are already seriously ill from having to deal with a black market to get a medication that helps them. S.B. 642 attempts to address patient concerns about adequate supply by improving access to medication. It also takes substantive steps to protect the privacy of medical marijuana patients by mandating that the name and specifics of a medical condition should not be submitted to the state so long as the application includes a physician's attestation that a debilitating medical condition exists. Further, it protects the rights of the primary caregiver because the address of the location where the marijuana is grown will no longer appear on the registry card. As a member of the Medical Cannabis Working Group,[1] the ACLU of Hawaii is aware of the many difficulties and dangers faced by patients in the current medical marijuana program. S.B. 642 takes a step in the right direction by providing patients with a safer and more secure program that better meets their health and safety needs.

[1] The Medical Cannabis Working Group's full report is available at http://www.acluhawaii.org/downloads/1002MCWG.pdf.

American Civil Liberties Union of Hawai'i
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Thank you for this opportunity to testify.

Sincerely,
Laurie A. Temple
Staff Attorney and Legislative Program Director

The American Civil Liberties Union ("ACLU") is our nation's guardian of liberty - working daily in courts, legislatures and communities to defend and preserve the individual rights and liberties that the Constitution and laws of the United States guarantee everyone in this country.

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COALITION FOR A TOBACCO-FREE HAWAI'I

To: The Honorable Angus McKelvey, Chair, Committee on Consumer Protection & Commerce
The Honorable Derek Kawakami, Vice Chair, Committee on Consumer Protection & Commerce
Members, House Committee on Consumer Protection & Commerce

The Honorable Karl Rhoads, Chair, Committee on Judiciary
The Honorable Sharon Har, Vice Chair, Committee on judiciary
Member, House Committee on Judiciary

From: Jessica Yamauchi, Executive Director
Date: March 24, 2013
Hrg: House Committees on Consumer Protection & Commerce & Judiciary; Mon., March 25, 2013 at 2:20 p.m. in Rm 325
Re: **Support for SB 642, HD1, Relating to Health, Part 1**

Thank you for the opportunity to provide testimony in support of SB 642, HD1, Part 1 which requires ALL tobacco products to be purchased in a direct face to face interaction between retailer and consumer, eliminating self-service displays.

The Coalition for a Tobacco Free Hawaii (Coalition) is an independent organization in Hawaii working to reduce tobacco use through education, policy and advocacy. Our organization is a nonprofit organization of over 100 member organizations and 2,000 advocates that works to create a healthy Hawaii through comprehensive tobacco prevention and control efforts.

Other Tobacco Products or OTPs are usually located on the counter at the point of sale in most convenience stores, where they are easily accessible. Research has shown that preventing the display of tobacco products leads to a decrease in the number of adolescents experimenting with and becoming addicted to those tobacco products.[1] This bill will reduce youth access to tobacco, as well as the theft of tobacco products. The World Health Organization has endorsed a ban on retail tobacco product displays as an effective method of reducing tobacco use.[2]

The Coalition would like to recommend that the language in this bill mirror the federal regulations around the sale of cigarettes and smokeless tobacco[3]. Recommended language:

> A retailer may sell cigarettes, smokeless tobacco, and all other tobacco products only in a direct, face-to-face exchange between the retailer and the consumer. Examples of methods of sale that are not permitted include vending machines and self-service displays.

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[1] Markus P. Bidell, *Case Study of Attempts to Enact Self Service Tobacco Display Ordinances: A Tale of Three Communities,* Tobacco Control, 71-77 (2000)
[2] World Health Organization Framework Convention on Tobacco Control, *Guidelines for Implementation of Article 13,* adopted Nov . 2008
[3] 21 C.F.R. § 1140.16

COALITION FOR A TOBACCO-FREE HAWAI'I

This measure will keep all tobacco products away from our youth and take away a powerful marketing tool currently enjoyed by a deadly industry. Prohibiting self-service tobacco displays is a promising practice that many states are considering or have enacted. Minnesota law prohibits self-service displays of cigarettes and smokeless tobacco, except in age-restricted retail tobacco stores that derive at least 90 percent of their revenue from the sale of tobacco and tobacco-related products.[4] Similarly, New York State prohibits self-service tobacco displays in retail stores that are open to minors.[5] California has also passed similar legislation and defines self-service displays as "the open display of tobacco products or tobacco paraphernalia in a manner that is accessible to the general public without the assistance of the retailer or employee of the retailer".[6]

Tobacco products are still the leading cause of preventable disease and death. We can reduce this by making sure youth never start and tobacco users have every opportunity to quit. This measure will continue to place Hawaii at the forefront of tobacco prevention and control.

Thank you for the opportunity to testify in support of this measure.

Jessica Yamauchi, M.A.
Executive Director

[4] MINN. STAT. § 461.18, subd. 1.
[5] N.Y. PUB. HEALTH LAW § 1399-cc(7).
[6] § 22962

the Drug Policy Action Group
A sister organization of the Drug Policy Forum of Hawai'i
PO Box 240323, Honolulu, HI 96824 ~ (808) 988-4386
pamelalichty@gmail.com

TO: Senate Committees on Consumer Protection and Commerce & Judiciary

FROM: Pamela Lichty, MPH
President

DATE: March 25, 2013, 2:20 p.m., room 325

RE: Relating to Health - S.B. 642, HD 1, Part 2 – **IN STRONG SUPPORT**

Aloha Chair McKelvey and Chair Rhoads and members of the Committees. My name is Pam Lichty and I'm testifying for the Drug Policy Action Group. I also served as Co-Chair of the Medical Cannabis Working Group, which made recommendations to this body in 2010.

Today we wish to offer the strongest possible support for Part 2 of S.B. 642, HD 1. As you know, the state's medical marijuana program is now thirteen years old. Since our program was enacted, eighteen other states plus the District of Columbia have authorized medical use of cannabis. As these newer programs are implemented, many improvements have been incorporated.

We will briefly outline the reasons for our support, and would like to respectfully offer some suggestions for amending the measure.

First, we must say that changes to the Medical Cannabis Program are way overdue. This was one of the main conclusions of the Working Group and the bill before us incorporates many of their top recommendations. (The full text of that report is available at www.dpfhi.org.) Many of the suggested improvements come directly from the experience of some of the more than 12,000 patients who are registered with the program in addition to physicians and other stakeholders who were surveyed.

We are pleased to see that several amendments deal with the issue of **appropriate supply and transfers** of useable cannabis between patients or patients and caregivers. This area of the law has been very unclear and has been subject to varying and arbitrary interpretation by both the county police departments and the Narcotics Enforcement Division (NED) of the Department of Public Safety, which currently runs the program.

In **Section 4** under **"Transfers"** the new language would permit one patient to share cannabis with another as long as there is no financial exchange. This addresses a common problem when one patient who is growing their supply has a crop failure or has more than the allowable limit and wishes to offer some to a fellow patient. It also addresses the situation when a patient is scheduled for immediate chemotherapy and has no time to grow their own or otherwise obtain it.

In **Section 5** the definition of **"adequate supply"** is addressed. Patients have been telling us for years that the amount of useable cannabis they use is highly variable. It depends on such factors as the nature of their injury or symptom and the amount required to provide relief.

For those who ingest cannabis in edibles, in a tincture or vaporize it (all modes of ingestion safer than smoking), more material is required. The appropriate amounts are subject to debate, but seven plants (with the unworkable mature/immature distinction eliminated) and five ounces of useable cannabis on hand is more consistent with what other states permit.

To put these amounts in context, the Committees are likely unaware that **the Federal Government supplies several patients with marijuana each month under their Compassionate IND Program dating from the 1980s. There were originally some 22 patients on the program, but only four remain alive. Every month these patients receive 300-360 pre rolled "joints" in a round tin (which is the equivalent of 8-9 ounces) from the Federal Government.** For more information on this, see, http://medicalmarijuana.procon.org/view.answers.php?questionID=000257

We like the language permitting compensation to caregivers. This is also overdue since it is unrealistic to expect that caregivers should go to the considerable cost, effort, and potential legal exposure to help patients simply out of the goodness of their hearts. The definition of "reimbursement" seems to be well thought out.

The issue of overreaching by program administrators is addressed. Unfortunately this is necessary because NED, in its thirteen years administering the program has modified the application form, added requirements, and otherwise placed new burdens on patients and physicians arbitrarily without amending the Administrative Rules.

We are pleased to see the new **confidentiality provisions** e.g. omitting the address where the cannabis is grown from the "blue card" which has lead to problems when a patient's card is lost or stolen.

Another good provision in that the patient's physician is not required to note the patient's qualifying condition on their submission form to NED. As long as the physician deems the patient qualified, there is no reason that NED, a law enforcement agency, should be provided with this knowledge. Some of the qualifying conditions such as HIV remain stigmatized and there is no need for this information to be disclosed to the department.

The provision that a copy of the written certification be sent to the primary physician makes sense in terms of a holistic treatment, but I can think of scenarios where this could be problematic - for example if the patient's primary provider was in the military system or adamantly opposed to the use of cannabis – either of these could negatively affect the patient's care.

Section 7, Subsection (c) raises the number of patients one **caregiver** can care for to three, from the current 1:1 ratio. This change is long overdue. Finding competent caregivers is difficult and many patients reside together or near each other. Many patients are too ill to grow their own supply, live in an apartment where it is impractical, or do not have the needed expertise.

This draft omits a section on **transportation** which appeared in the earlier versions. This provision addresses a common problem that arises when, for example, a patient needs to travel to a doctor's appointment and must carry his supply of medicine with him. Police and judges in different counties have no uniform approach to dealing with this situation.

We agree with law enforcement that the section as originally drafted was unworkable since it offered "immunity" to traveling patients regardless of circumstances. However this is an important issue (in fact there is a case before the Hawaii Supreme Court right now dealing with the ambiguity in the statute.)

We would respectfully like to suggest language which was developed in consultation with several attorneys familiar with the medical marijuana program. To be clear, this is designed to deal with concerns around intra-island travel, not inter-state. We believe it will resolve the vague wording of the statute which results in inconsistent enforcement.

Suggested Amendment

[§329-122] Subsection (c) to read:
(c) The authorization for the medical use of marijuana in this section shall not apply to:
(1) The medical use of marijuana that endangers the health or well-being of another person;
(2) The medical use of marijuana <u>other than</u> transportation <u>or possession</u>:
(A) In a school bus, public bus, or any moving vehicle;
(B) In the workplace of one's employment;
(C) On any school grounds;
(D) At any public park, public beach, public recreation center, recreation or youth center; or
(E) Other place open to the public; and
(3) The use of marijuana by a qualifying patient, parent, or primary caregiver for purposes other than medical use permitted by this chapter.

Department of Health References
Throughout this bill all references to the Department of Public Safety are replaced by the Department of Health. These amendments imply that this is where the program is

currently placed, although the Committees know that it is currently in the Department of Public Safety. S.B 642, HD 1 which is in your committees after passing the Senate would in fact transfer the program.

Even if this bill passes however, there will be transition time required. So we suggest the language here replacing the Department of Public Safety with the Department of Health be deleted. Another possibility could be to change the language to read something like "the administering department" - anticipating the transfer.

We thank the Committees for considering our suggestions and urge you to pass Part 2 of this critically important bill on with a strong recommendation for approval. Mahalo for hearing this measure and for the opportunity to testify.

COMMUNITY ALLIANCE ON PRISONS

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COMMITTEE ON CONSUMER PROTECTION & COMMERCE
Rep. Angus McKelvey, Chair
Rep. Derek Kawakami, Vice Chair

COMMITTEE ON JUDICIARY
Rep. Karl Rhoads, Chair
Rep. Sharon Har, Vice Chair

Monday, March 25, 2013
2:20 p.m.
Room 325

SUPPORT FOR SB 642 HD1 – PART II

Aloha Chairs McKelvey & Rhoads, Vice Chairs Kawakami & Har and Members of the Committees!

My name is Kat Brady and I am the Coordinator of Community Alliance on Prisons, a community initiative promoting smart justice policies for more than a decade. This testimony is respectfully offered on behalf of the 5,800 Hawai`i individuals living behind bars, always mindful that approximately 1,500 individuals are serving their sentences abroad, thousands of miles away from their loved ones, their homes and, for the disproportionate number of incarcerated Native Hawaiians, far from their ancestral lands.

SB 642 HD1 Part II amends the Medical Use of Marijuana Law.

Community Alliance on Prisons supports Part II of this measure.

The law has been part of the Hawai`i Revised Statutes for 13 years without any improvements even though other states and medical advancements have shown how Hawai`i's program can be improved upon.

Law abiding citizens who have been authorized by physicians to use medical cannabis want to comply with the law but find it very difficult under the present archaic system, so we are criminalizing sick people.

This measure allows patients and caregivers to help other patients by allowing them to give some of their medicine to qualifying caregivers and patients. This is especially helpful to patients who cannot grow their own, who have had a crop failure, or need seeds or clones to start with.

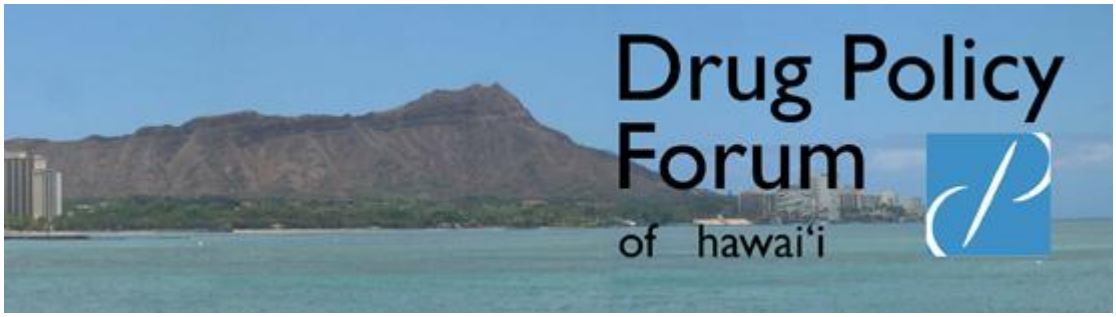
We know of many patients, such as those undergoing chemotherapy, have debilitating pain, or suffer from immediate symptoms, who need this medicine immediately, and this bill corrects that portion of the current law.

Many patients are too sick or unable to grow their own medicine. Caregivers are difficult to find and allowing them to care for additional patients improves patient access to needed medicine. Many patients need caregivers because live in a location where it is illegal/forbidden (such as in federal housing or in apartment complexes in urban areas) or live in a location where it would be unsafe to grow their medicine.

Part II of this measure also protects patient privacy, as enshrined in Hawai`i's Constitution, by removing the address where the marijuana is grown from the registry card and ensures that the "qualifying condition" of the patient will not be disclosed to the Department running the program.

Community Alliance on Prisons urges the committees to support Pat II of this measure to improve Hawai`i's medical cannabis program.

Mahalo for this opportunity to testify.



Dedicated to safe, responsible, humane and effective drug policies since 1993

March 25, 2013
To: Rep. Angus McKelvey, Chair
Rep. Derek Kawakami, Vice Chair and
Members of the Committee on Consumer Protection & Commerce

Rep. Karl Rhoads, Chair
Rep. Sharon Har, Vice Chair
Members of the Committee on Judiciary

RE: SB 642 HDI
Hearing: Monday, March 25, 2013, 2:20 p.m., Room 325
Position: Strong Support SB 642 HD1 - Part II

The Drug Policy Forum of Hawai'i testifies in strong support of Part II of SB 642 HDI Relating to Medical Marijuana. Part II of the proposed bill addresses changes that the Medical Cannabis Working Group identified as top priorities:

#2 was to "Increase the allowable number of plants and the amount of usable cannabis to ensure that patients have an adequate supply of their medicine.

#3 was to allow caregivers to care for at least five patients to ensure that patients are assured of an adequate supply and a competent caregiver.

TRANSPORTATION

The medical marijuana section allows transportation, however, this measure is needed to clarify that intrastate transportation is allowed. Four medical marijuana patients were arrested on the Big Island while transporting their marijuana. Of those cases, one patient was convicted and two cases were dismissed. In her ruling dismissing the case, Judge Barbara Takase ruled that "HRS §329 is void for vagueness." All of the cases were appealed. One case is being heard in March by the Hawaii State Supreme Court. However, none of the decisions clarified the issue of transporting marijuana by a patient.

We suggest deleting the" transportation section" of HD1, and instead, amending [§329-122] Subsection (c) to read:
"(c) The authorization for the medical use of marijuana in this section shall not apply to:

(1) The medical use of marijuana that endangers the health or well-being of another person;

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(2) The medical use of marijuana other than transportation or possession:

(A) In a school bus, public bus, or any moving vehicle;

(B) In the workplace of one's employment;

(C) On any school grounds;

(D) At any public park, public beach, public recreation center, recreation or youth center; or

(E) Other place open to the public; and

(3) The use of marijuana by a qualifying patient, parent, or primary caregiver for purposes other than medical use permitted by this chapter."

Caregivers are difficult to find and allowing them to care for additional patients improves patient access to needed medicine. Many patients need caregivers because they are too sick to grown their own plants or live in a location where it is dangerous or impractical to grow their own plants. Many do not have the needed expertise.

Caregivers are also allowed to be reimbursed for the costs they incur. This provides them protection from prosecution for selling or trafficking marijuana.

This measure allows patients and caregivers to help other patients by allowing them to give some of their medicine to qualifying caregivers and patients. This is especially helpful to patients who cannot wait to grow their own; or who have had a crop failure. Many cancer patients undergoing chemo therapy need medicine immediately and have nowhere to turn except to a current patient, who can also provide information on how to use vaporizers. etc.

In a survey, many patients have said that the current limit on how much cannabis they can possess is not sufficient for their needs. Patients have said that they use more medicine when using vaporizers. If they cannot possess sufficient supply, then they are forced to smoke their medicine rather than use their preferred method which may be safer than smoking. Those who prepare edibles also need a larger supply of cannabis.

Part II of this measure protects patient privacy by eliminating the address of where the marijuana is grown from the registry card. If a wallet is stolen, for instance, the location of the marijuana is available to the thief.

Patients are law abiding citizens who are seriously ill, or who have chronic conditions and who want to comply with the law. The Medical Marijuana program is a compassionate care program established to relieve suffering. Patients are simply asking for changes to the program so that it will meet their needs. These changes are needed immediately because although a legal dispensary or compassion center model is being considered. it may be some time before they are in operation. In the meantime, patients need improvements in the program.

We respectfully ask the committees to pass this measure. Thank you for the opportunity to provide testimony today.

TESTIMONY ON SENATE BILL 642 HD1
A BILL FOR AN ACT RELATING TO
HEALTH
By
Keith Kamita

House Committee on Consumer Protection & Commerce
Representative Angus L.K. McKelvey, Chair
Representative Derek S.K. Kawakami, Vice Chair

House Committee on Judiciary
Representative Karl Rhoads, Chair
Representative Sharon E. Har, Vice Chair

Wednesday, February 13, 2013, 2:30 p.m.
State Capitol, Room 325

Chairs McKelvey and Rhoads, Vice Chairs Kawakami and Har, and Members of the Committees:

I am testifying as a private citizen and as a concerned parent feels that Senate Bill 642 HD1 as written would increase the amount of marijuana diverted to the streets and increase availability to our kids. As a law enforcement officer with over 27 years of narcotics experience I have to **oppose the proposed language in part 2** of Senate Bill 642 HD1. This section proposes to amend aspects of Hawaii's medical use of marijuana program by:

- Increasing the authorized number of a patient's marijuana plants from 4 immature and 3 mature and up to 3 ounces of usable marijuana to 7 mature plants and 5 ounces of usable marijuana a significant increase.
- Changing the patient to caregiver ratio from one patient per caregiver to three patients per caregiver;
- Allowing for a caregiver to charge a patient for costs associated with assisting that qualifying patient to obtain marijuana for medical use;
- Authorizing the transfer of marijuana between other patients and caregivers;
- Authorizing patients from other states to use medical marijuana while in Hawaii;

- Clarifying that a certifying physician need not be a patient's primary care physician;
- Prohibiting the state from indicating on the registry card the location where the qualified marijuana plants are grown.
- Limit the amount of marijuana grown on an TMK to not exceed 28 plants regardless of amount of patients or caregivers residing on the property.

Passage of Senate Bill 642 HD1 as written will create difficulties for law enforcement and neighbors of patients and caregivers that may abuse the provisions of the program. Imagine the following scenario:

> A house in which three medical marijuana patients reside (and this is not uncommon) currently could have 21 plants and 15 ounces of useable marijuana. The law now allows patients to be caregivers to one other patient. Under this bill each patient could be a caregiver for 3 other patients. This would potentially allow each patient/caregiver to grow up to 28 plants and possess up to 20 ounces of useable marijuana. If each of the three patients were also caregivers to three other patients, then the one house could legally grow up to 84 plants and possess up to 60 ounces of marijuana. Such a situation would draw the attention of law enforcement officials. However, job of law enforcement would be made difficult by the provision that prohibits the state from indicating on the registration card the location where the qualified marijuana is grown.

Because the authorized location of marijuana plants would not be on the permit there would be a tremendous strain on the law enforcement officers and the DOH if the DOH to conduct verifications twenty-four hours per day, seven days per week. One potential result is that patient's marijuana plants may be seized unnecessarily. The advantage of having the patient or caregiver's authorized grow location is that when a law enforcement officer is called to a residence and finds marijuana plants the patient or caregiver can just present his or her medical use of marijuana permit and the officer will at a glance be able to verify that the

plants are authorized and leave. If this information is not on the permit the law enforcement officer will have to contact DOH for every permit.

The need for such verifications constitutes a large part of the program's administration. In FY 2012, Public Safety's Narcotics Enforcement Division (NED) conducted 950 medical marijuana verification checks for Federal, State and County law enforcement agencies. NED received numerous verification calls resulting in an individual being released without arrest or seizure of their plants due to the ability of law enforcement officer to contact our Narcotics Enforcement Division 24 hours a day, 7 days a week to verify a patient or caregiver's medical use of marijuana certificate status. Each check may take up to 15 minutes.

Senate Bill 642 HD1 also allows for visitors from other States that have medical marijuana permits to utilize marijuana in Hawaii. The problem with this is that there is no way for law enforcement or DOH to verify the validity of the out-of-state visitors medical use of marijuana ID cards.

Thank you for the opportunity to testify on this matter.

House of Representatives Testimony
Committee on Consumer Protection & Commerce

To:Representative Angus L.K> McKelvey, Chair
Representative Derek S.K. Kawakami, Vice Chair
Members, House Committee on Consumer Protection & Commerce
and

To: Rep. Karl Rhoads, Chair
Rep. Sharon E. Har, Vice Chair
Members of the House Committee on Judiciary

Re: Strong Support for SB 642, HD1: Relating to Health

Hrg:March 25, 2013 at 2:20 pm in Conf. Rm. 325

I am in strong support of SB 642, HD 1, Part 1 requiring all retailers to sell all tobacco products, especially the colorfully packaged and appealing other tobacco products (OTPs), in a direct, face-to-face exchange--in the same manner that cigarettes are sold. If OTPs are sold only through a direct, face-to-face exchange, there will be less influence by the tobacco industry on Hawaiiâ€™s youth. This is a cutting-edge approach to reduce youth access to tobacco and to lower youth tobacco use rates.

Other Tobacco Products or OTPs are usually located on the counter at the point of sale in most convenience stores, where they are easily accessible. The colorful packaging and various candy flavors of other tobacco products attract youth, which can have lasting health effects--from encouraging youth to try tobacco products for the first time to continuing or increasing an existing habit. OTPs should be sold only through a face-to-face exchange with the retailer, like cigarettes.

Tobacco products, regardless of form, are still the leading cause of preventable disease. We can address this public health issue by making sure youth never start smoking, and ensuring that tobacco users have every opportunity to quit. Requiring that all tobacco products be sold through a face-to-face exchange with the retailer is a critical step in our tobacco prevention and control efforts.

Thank you for the opportunity to provide testimony in support of this measure.

Debbie Apolo
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The following individuals submitted the same written testimony in strong support of SB 642, HD 1:

Debbie Apolo
Janelle Kubo
Crissy Kawamoto
Lisa Maddock
Michele Nihipali
Madeleine Miller
Serenity Chambers
Antoinette Everett
Patricia Fleck
Barbara Nosaka
Paul Perretta
Stevette Kaaihue
Marilyn Gagen
Koa Robinson
Poranee Sponsel
John A. Hau'oli Tomoso
Michelle Kwock
Edmar Castillo
Maile Goo
Jermy Domingo