

**Testimony of the Office of the Public Defender
State of Hawaii
to the House Committee on Judiciary**

February 25, 2014

H.B. No. 1858: Relating to the Penal Code.

Chair Rhoads and Members of the Committee:

This bill proposes to expand the special treatment under the Assault law which is now afforded to a growing category of individuals to include a "liquor commission investigator." This change would elevate what is now the misdemeanor offense of Assault in the Third Degree ["intentionally or knowingly causing bodily injury to another person"] to a class "C" felony if the offense is committed against a liquor commission investigator. As a result, conduct currently classified as Assault in the Third Degree, punishable by up to one year in prison, would become Assault in the Second Degree, punishable by up to five years in prison.

At the outset, there does not seem to be a compelling need to afford liquor investigators this special treatment. We have not seen an abundance of cases where such investigators were targets for assaultive conduct. Moreover, these investigators have had a long history of professional malfeasance ranging from abuse of power to solicitation of bribes. While we certainly do not wish to tarnish the conduct of current and past investigators who have acted ethically and responsibly, the checkered past of this group of individuals as a whole does not merit special treatment under the law.

In addition, liquor investigators often operate in a plainclothes, undercover capacity. In such a situation, it might not be clear to those involved in an altercation that the person was an investigator. It would not comport with due process to prosecute such a defendant under the higher offense.

This bill is the latest in a line of proposed legislation seeking to single out particular occupations for special treatment as a class of victims. The problem with such legislation is that it does not afford greater protection from harm but it does create an ongoing desire by other occupations to be afforded the same special treatment. Our current Assault in the Second Degree assault statute gives special consideration to correctional workers, educational workers, emergency medical services personnel and persons employed at a state-operated or -contracted mental health facilities. As soon as there is an assaultive incident involving another occupation, the door has already been opened to ask why their group was not entitled to the same special treatment.

Other than the exceptions noted above, the structure of our penal code bases the level of an assault charge on three criteria:

- 1) the level of injury, if any, if caused by the defendant's conduct,
- 2) the state of mind with which the conduct was done, and
- 3) the actual conduct itself, including whether or not a weapon was used.

We believe that the current structure should not be further changed to include this additional proposed category.

We do not support passage of H.B. No. No. 1858. Thank you for the opportunity to provide testimony on this bill.

LIQUOR COMMISSION
CITY AND COUNTY OF HONOLULU

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COMMISSIONER

ANNA C. HIRAI
ACTING ADMINISTRATOR

February 21, 2014

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

Hearing: Tuesday, February 25, 2014
2:00 p.m.; Room 325

Position: Support HB1858, Relating to the Penal Code

Dear Chair Rhoads, Vice Chair Har, and Members:

The Liquor Commission, City and County of Honolulu, supports House Bill 1858, Relating to the Penal Code.

Like the other public safety individuals identified in Section 707-711(i), Hawaii Revised Statutes, the proposed measure will characterize the knowing or intentional infliction of bodily injury to a liquor control investigator engaged in the performance of duty as assault in the second degree. The environment in which our liquor control investigators work is as potentially hazardous as that occupied by firefighters and water safety officers. As such, the proposed measure is an appropriate recognition of the physical risk inherent in routinely dealing with licensees and patrons in an alcohol-fueled environment, and a deterrent to those who feel infliction of bodily harm to a liquor control investigator is without serious consequence.

The Liquor Commission urges your support of House Bill 1858, Relating to the Penal Code. Thank you for the opportunity to testify.

Respectfully submitted,


ANNA C. HIRAI
Acting Administrator

ACH:

Justin F. Kollar
Prosecuting Attorney

Kevin K. Takata
First Deputy



Rebecca A. Vogt
Second Deputy

Diana Gausepohl-White, LCSW
Victim/Witness Program Director

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TESTIMONY IN SUPPORT OF
H.B. NO. 1858
A BILL FOR AN ACT RELATING TO THE PENAL CODE

Justin F. Kollar, Prosecuting Attorney
County of Kauai

House Committee on Judiciary

Tuesday, February 25, 2014
2:00 p.m., Room 325

Honorable Chair Rhoads, Vice-Chair Har, and Committee Members:

The Office of the Prosecuting Attorney, County of Kauai submits the following testimony in **support** of H.B. 1858, Relating to the Penal Code.

This bill could confer upon Liquor Commission Investigators the same status as other law enforcement officers and emergency responders for purposes of state law concerning assaults. The work done by these Investigators often involves compliance checks in bars and nightclubs in the late evening hours. The potential for violence is very real, as real as it is for police officers or other emergency responders working in the same conditions. This bill recognizes that reality.

For these reasons, we **support** H.B. 1858 as written. We ask the Committee to **pass** the bill. Thank you for the opportunity to testify on this matter.

Respectfully,

A handwritten signature in black ink, appearing to read "Justin F. Kollar".

Justin F. Kollar
Prosecuting Attorney
County of Kaua'i

Bernard P. Carvalho, Jr.
Mayor

Nadine K. Nakamura
Managing Director



Gerald T. Rapozo
Director

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February 21, 2014

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

Hearing: Tuesday, February 25, 2014
2:00 p.m.; Room 325

Position: Support HB 1858 Relating to the Penal Code

Dear Chair Rhoads, Vice Chair Har and Members:

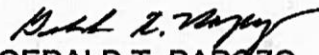
The Department of Liquor Control, County of Kauai, supports House Bill 1858 relating to the Penal Code.

The liquor control investigators often encounter hostile persons when making on-site inspections of liquor licensed premises. Investigators deal with persons that are intoxicated, maybe under the influence of narcotics or both.

The proposed measure will add liquor control investigators to those already recognized as public safety individuals. The Department of Liquor Control, County of Kauai urges you to support House Bill 1858, Relating to the Penal Code.

Thank-you for the opportunity to testify on this matter.

Respectfully Submitted,


GERALD T. RAPZO
Director



HAWAII GOVERNMENT EMPLOYEES ASSOCIATION

AFSCME Local 152, AFL-CIO

RANDY PERREIRA, Executive Director • Tel: 808.543.0011 • Fax: 808.528.0922

LATE

The Twenty-Seventh Legislature, State of Hawaii
The House of Representatives
Committee on Judiciary

Testimony by
Hawaii Government Employees Association
February 25, 2014

H.B. 1858 – RELATING TO THE PENAL CODE

The Hawaii Government Employees Association, AFSCME Local 152, AFL-CIO supports the intent of H.B. 1858 which amends HRS 707-711, Section 1.(i) and would make an assault on a liquor commission investigator who is engaged in the performance of duty, an assault in the second degree.

Liquor commission investigators inspect premises where intoxicating liquor is manufactured, sold, and consumed, as well as conduct investigations to enforce applicable state and local liquor laws and rules. These inspections and investigations can put these public servants in very dangerous situations. Not only is intoxicating liquor an contributing factor to their potentially volatile work environment, but other factors such as crime, illegal drugs, and weapons add to the dangers these public employees encounter in the course of their job.

Including liquor commission investigators in HRS 707-711 recognizes the essential work they perform on behalf of the public and provides some enhanced legal protection from any assault during the performance of their duties.

Thank you for the opportunity to testify and we urge your support of H.B. 1858.

Respectfully submitted,

Randy Perreira
Executive Director

LATE

HB1858

Submitted on: 2/25/2014

Testimony for JUD on Feb 25, 2014 14:00PM in Conference Room 325

Submitted By	Organization	Testifier Position	Present at Hearing
Larry Moises	Individual	Support	No

Comments:

Please note that testimony submitted less than 24 hours prior to the hearing, improperly identified, or directed to the incorrect office, may not be posted online or distributed to the committee prior to the convening of the public hearing.

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