

SB2258

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

February 12, 2014

S.B. 2258: Relating to the Penal Code.

Chair Hee 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.

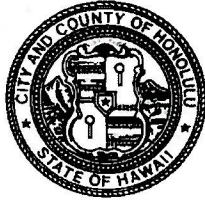
We believe that the current structure should not be further changed to include this additional proposed category.

We do not support passage of S.B. No. 2258. Thank you for the opportunity to provide testimony on this bill.

LIQUOR COMMISSION
CITY AND COUNTY OF HONOLULU

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KIRK CALDWELL
MAYOR



February 10, 2014

Senator Clayton Hee, Chair
Senator Maile S.L. Shimabukuro, Vice Chair
Committee on Judiciary and Labor

Hearing: Wednesday, February 12, 2014
10:00 a.m.; Room 016

Position: Support SB2258, Relating to the Penal Code

Dear Chair Hee, Vice Chair Shimabukuro, and Members:

The Liquor Commission, City and County of Honolulu, supports Senate Bill 2258, 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 Senate Bill 2258, Relating to the Penal Code. Thank you for the opportunity to testify.

Respectfully submitted,


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Acting Administrator

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