

STATE OF HAWAI‘I
OFFICE OF THE PUBLIC DEFENDER

**Testimony of the Office of the Public Defender,
State of Hawai‘i to the Senate Committee on
Public Safety, Intergovernmental, and Military Affairs**

February 16, 2021

S.B. No. 295: RELATING TO FIREARMS

Chair Nishihara, Vice Chair English, and Members of the Committee:

The Office of the Public Defender respectfully opposes S.B. No. 295.

While the Office of the Public Defender agrees that alcohol and loaded firearms are a dangerous combination, we remain concerned that the application and enforcement of this law may cause unintended effects. Because murderers, robbers, thieves, and vandals generally do not appear at scheduled times and places to do their misdeeds, the innocent homeowner or resident must be able to defend their “castle,” and at times, this will require that they leave their dwelling with a loaded firearm in order to meet, investigate, or neutralize a potential perpetrator. This is especially a concern for our rural residents who reside on large properties and where law enforcement is not readily available. Moreover, it is often times more prudent for homeowners to confront intruders away from the dwelling where other family members (including children and the elderly) are residing. Waiting for intruders to reach the dwelling will place children and the elderly at greater risk.

In a perfect world, that homeowner would be alert and cold sober at the moment they must confront a potential intruder. However, in reality, one may have had a few alcoholic beverages or even more when criminals decide to appear on private property, but regardless of the level of intoxication, one must be able to defend oneself, family members, and loved ones. Indeed, the homeowner has the right to defend his/her home and all that reside there.

Finally, this measure is not necessary, as the Hawai‘i Revised Statutes already provides several offenses regarding criminal malfeasance with the use of a firearm. Terroristic Threatening in HRS 707-716 (1)(e) is a Class C felony with prohibits threatening another person with the use of a dangerous instrument and even a simulated firearm. Reckless Endangering in the First Degree (Class C felony) and in the Second Degree (misdemeanor) both address reckless behavior with firearms,

i.e. discharging a firearm “in a manner which recklessly places another person in danger of death or serious bodily injury” or discharging a firearm “in a populated area, in a residential area, or within the boundaries or in the direction of any road, street, or highway.”

Thank you for the opportunity to comment on S.B. No. 295.

SB-295

Submitted on: 2/15/2021 11:17:08 AM

Testimony for PSM on 2/16/2021 1:20:00 PM

Submitted By	Organization	Testifier Position	Present at Hearing
Bradford Davis	Individual	Oppose	No

Comments:

Good morning to the committee,

I would like to share my opposition to SB295. I believe my God given right to self defense is not conditional.

Respectfully,

Bradford Davis



MICHAEL P. VICTORINO
MAYOR

OUR REFERENCE

YOUR REFERENCE

POLICE DEPARTMENT

COUNTY OF MAUI

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TIVOLI S. FAAUMU
CHIEF OF POLICE

DEAN M. RICKARD
DEPUTY CHIEF OF POLICE

February 12, 2021

Senator Clarence K. Nishihara, Chair
Senator J. Kalani English, Vice Chair
Committee on Public Safety, Intergovernmental, and Military Affairs
Thirty-First Legislature 2021
Hawaii State Capitol
415 South Beretania Street
Honolulu, HI 96813

RE: SENATE BILL 295 RELATING TO FIREARMS

Dear Chair Nishihara and Committee Members:

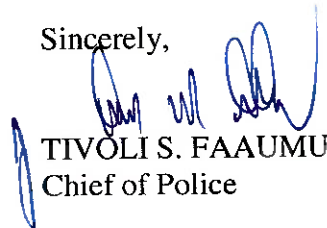
The Maui Police Department OPPOSES the passage of SB 295 RELATING TO FIREARMS, as written.

The act as written amends Hawaii Revised Statute Chapter 134 to add **Possession of a Loaded Firearm While Intoxicated Prohibited** and is a petty misdemeanor.

This is counter intuitive to the existing chapters 134-25 Place to Keep Pistol or Revolver and 134-26 Carrying or Possessing a Loaded Firearm on a Public Highway, which are both Class B Felony offenses.

Accordingly, the Maui Police Department will NOT SUPPORT SB 295 as written.
Thank you for the opportunity to testify.

Sincerely,



TIVOLI S. FAAUMU
Chief of Police

DEPARTMENT OF THE PROSECUTING ATTORNEY
CITY AND COUNTY OF HONOLULU

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THOMAS J. BRADY
FIRST DEPUTY
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THE HONORABLE CLARANCE K. NISHIHARA, CHAIR
SENATE COMMITTEE ON PUBLIC SAFETY, INTERGOVERNMENTAL, AND
MILITARY AFFAIRS
Thirty-First State Legislature
Regular Session of 2021
State of Hawai'i

February 16, 2021

RE: S.B. 295; RELATING TO FIREARMS.

Chair Nishihara, Vice Chair English, and members of the Senate Committee on Public Safety, Intergovernmental, and Military Affairs, the Department of the Prosecuting Attorney of the City and County of Honolulu ("Department") submits the following testimony expressing concerns for S.B. 295.

The purpose of S.B. 295 is to create a new offense of possession of a loaded firearm while intoxicated. Although this bill has good intentions, the Department believes that this bill may be unnecessary as our current "place to keep" statutes (Sections 134-23, 134-24 and 134-25, Hawaii Revised Statutes ("HRS")), appear to cover the proposed unlawful conduct and are currently classified as class B and C felonies.

In addition, the current language incorporated in S.B. 295 would create significant difficulties in successfully prosecuting such offenses. Specifically, the Department believes that interchangeably using language from HRS §291E-61 (operating a vehicle under the influence of an intoxicant, ("OVUII")) to effectuate this new offense could cause significant evidentiary problems. This bill borrows language from HRS §291E-61(a)(2), (a)(3) and (a)(4), to define when a person is intoxicated. For OVUII cases, however, the Department currently uses observations of a defendant's bad driving and a standardized field sobriety test ("SFST") to determine if the defendant is under the influence in an amount sufficient to "impair the person's ability to operate the vehicle in a careful and prudent manner." This is problematic as there may be limited testing methods to prove the proposed subsection (c)(2)(a) (*see* page 1, line 15, through page 2, line 2), as the SFST is scientifically validated by the National Highway Traffic Safety Administration only to assess **driving**, not the ability to operate a firearm.

Further, although the Department does not object to limiting proposed protections for the defendant to his or her dwelling (meaning "any building or structure, though movable or temporary,

or a portion thereof, which is for the time being a home or a place of lodging”), we would note that under HRS §134-23 (Place to Keep Loaded Firearms other than Pistols and Revolvers; Penalty), defendants are allowed to have firearms confined to the “place of business, residence, or sojourn” The Department is also concerned that the term “immediate physical control” is not defined or clearly articulated, which may leave a myriad of situations in which it would be unclear whether a loaded firearm is in the immediate physical control of the defendant (e.g. inside a vehicle, out of arm’s length of the defendant).

Keeping all of these things in mind, the Department of the Prosecuting Attorney of the City and County of Honolulu expresses concerns with the passage of S.B. 295. Thank you for the opportunity to testify on this matter.

SB-295

Submitted on: 2/15/2021 8:52:36 AM

Testimony for PSM on 2/16/2021 1:20:00 PM

Submitted By	Organization	Testifier Position	Present at Hearing
Daniel Reid	Testifying for NRA	Oppose	No

Comments:

The NRA opposes SB 295, as the legislation lacks an exception for self-defense and is too limiting with the use of the term dwelling. The dwelling exception should be extended out to cover an individual's property or at the very least curtilage.



The Honorable Clarence K. Nishihara , Chair
The Honorable J. Kalani English, Vice Chair
Committee on Public Safety, Intergovernmental, and Military Affairs

Via Video Conference

HEARING: Tuesday, February 16, 2021, at 1:20pm

RE: SB295 Firearms; Possession Prohibited While Intoxicated

Aloha Members of the Senate Committee,

The Hawaii Firearms Coalition OPPOSES SB295.

The Hawaii Firearms Coalition opposes this bill due to the following reasons:

1. The current bill only provides an exclusion to the gun owner in their dwelling. This exclusion should extend beyond the four walls of their home and extend to all their property, place of business, and place of sojourn.
2. This bill is poorly worded and could subject an otherwise law-abiding citizen from exercising his right to defend himself or others after having an alcoholic beverage while on a hunting trip or day camping.
3. The bill is worded as to implicate any amount of alcohol being present as a criminal offense. The standard needs to be tailored to an exact amount and not a subjective interpretation.

Please vote no or amend this proposed legislation.

For these reasons the Hawaii Firearms Coalition Opposes SB295. Thank you for your consideration.

Mahalo

Jon Webster Abbott
Director, Hawaii Firearms Coalition
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Email: jonwebsterabbott@yahoo.com

SB-295

Submitted on: 2/14/2021 12:35:10 PM

Testimony for PSM on 2/16/2021 1:20:00 PM

Submitted By	Organization	Testifier Position	Present at Hearing
Marcus Tanaka	Individual	Oppose	No

Comments:

Why do we need this? No regular citizen is allowed to carry a firearm outside of their residence, just to name 1 of a few places.

No one can legally have a firearm at a bar, unless that is their place of business.

SB-295

Submitted on: 2/12/2021 10:14:53 AM

Testimony for PSM on 2/16/2021 1:20:00 PM

Submitted By	Organization	Testifier Position	Present at Hearing
Brian Isaacson	Individual	Oppose	No

Comments:

This bill needs to make exceptions for circumstances where a legally intoxicated gun owner must confront a dire threat to self or family with a firearm.

SB-295

Submitted on: 2/12/2021 1:59:59 PM

Testimony for PSM on 2/16/2021 1:20:00 PM

Submitted By	Organization	Testifier Position	Present at Hearing
Gerard Silva	Individual	Oppose	No

Comments:

Violation of the 2nd Amendment. You will be Charged!

SB-295

Submitted on: 2/13/2021 11:42:17 AM

Testimony for PSM on 2/16/2021 1:20:00 PM

Submitted By	Organization	Testifier Position	Present at Hearing
Austin White	Individual	Oppose	No

Comments:

OPPOSED

While most agree that the use of firearms, or cars, or machinery, or most anything that will have cause harm or have a negative impact upon peoples lives is just plain stupid, legislating stupidity is, well, stupidity itself.

If a person commits an act while intoxicated, there are already laws on the books that address these actions. Do we really need another?

SB-295

Submitted on: 2/13/2021 4:51:12 PM

Testimony for PSM on 2/16/2021 1:20:00 PM

Submitted By	Organization	Testifier Position	Present at Hearing
Philip T. Rapoza	Individual	Oppose	No

Comments:

I oppose

SB-295

Submitted on: 2/14/2021 9:04:14 AM

Testimony for PSM on 2/16/2021 1:20:00 PM

Submitted By	Organization	Testifier Position	Present at Hearing
Shyla Moon	Individual	Oppose	No

Comments:

In any unexpected home invasion this leaves all home owners vulnerable to breaking a law when they're defending their home. This is blatant attacks to make LEGAL gun owners criminals. I support the second amendment of our constitution. Aloha.

SB-295

Submitted on: 2/14/2021 9:09:18 PM

Testimony for PSM on 2/16/2021 1:20:00 PM

Submitted By	Organization	Testifier Position	Present at Hearing
Cheryl Tanaka	Individual	Oppose	No

Comments:

People are not allowed to carry outside the house, whats the point of this bill? A diabetic person in ketosis would also blow a false postive test. If a diabetic has to use their firearm for self defense, that would cause a false positive on a breathalyzer.

SB-295

Submitted on: 2/14/2021 11:46:46 PM

Testimony for PSM on 2/16/2021 1:20:00 PM

Submitted By	Organization	Testifier Position	Present at Hearing
Benel Piros	Individual	Oppose	No

Comments:

I oppose this bill because it will pin a crime on me if i need defend my home with my firearm while consuming alcohol.

SB-295

Submitted on: 2/15/2021 1:05:10 AM

Testimony for PSM on 2/16/2021 1:20:00 PM

Submitted By	Organization	Testifier Position	Present at Hearing
kimo galon	Individual	Oppose	No

Comments:

I oppose SB295.

Criminals are oppprtunists

I oppose this bill because it has the word "dwelling". Currently it is legal to consume alcohol anywhere on one's property.

Bill does not include "place of business" or "place of sojourn" which are also both 2 other places that firearms are legally allowed. If someone is staying at a family member's, friends home or at a hotel and is drinking? They are violating the law if "dwelling" is used. Another example could be someone is drinking at their place of business. Ultimately being the same meaning

I would like this bill to be completely thrown out. Crime does not wait for you to sober up. Nor do criminals have a work schedule as we the law abiding, hard working citizens of Hawaii. BAC of 0.08 is such an subjective marker with too many variables that could sway either way for someone.

Furthermore, with Hawaii being so stringent with open/conceal carry permits firearms owners are not granted permits to carry outside of "sojourn" or our four walls.

Hawaii has no current issues with alcohol abuse and firearms. This bill is far too vague and does nothing to curb or prevent violent crime in Hawaii.

We are not safe just because we are out having dinner and drinks.

SB-295

Submitted on: 2/15/2021 10:39:10 AM

Testimony for PSM on 2/16/2021 1:20:00 PM

Submitted By	Organization	Testifier Position	Present at Hearing
Jacob Holcomb	Individual	Oppose	No

Comments:

Oppose. We already have too many gun laws and this is another virtue-signal piece of legislation that will not improve public safety one bit.

SB-295

Submitted on: 2/15/2021 11:05:21 AM

Testimony for PSM on 2/16/2021 1:20:00 PM

Submitted By	Organization	Testifier Position	Present at Hearing
steven a kumasaka	Individual	Oppose	No

Comments:

oppose

SB-295

Submitted on: 2/15/2021 11:10:29 AM

Testimony for PSM on 2/16/2021 1:20:00 PM

Submitted By	Organization	Testifier Position	Present at Hearing
mitchell weber	Individual	Oppose	No

Comments:

I OPPOSE SB295,

SB295 is a pointless "Nanny State" law introduced by a rabid anti-gunner who is bought and paid for by mainland anti-gun lobbyists. Firearms owners ability to protect themselves, family and friends on their property should not end after a couple of beers. It is the personal responsibility of the firearms owner to determine their ability to safely operate a firearm, not the State's. Some individuals can function with a standard level of clarity while at/over the legal intoxication limit.

This proposed law was introduced under the guise of public safety by a man whose lack of knowledge and hatred of firearms and their owners should be a disqualifying factor. The wording in SB295 is purposefully convoluted and would cause confusion and possible arrest of affected citizens by LEO's whose individual interpretation of the law may differ from the spirit of law. SB295 is a petty way to victimize and punish individuals who do not rely on the State to manage their personal protection.

Regards,

Mitchell Weber

SB-295

Submitted on: 2/15/2021 11:36:49 AM

Testimony for PSM on 2/16/2021 1:20:00 PM

Submitted By	Organization	Testifier Position	Present at Hearing
Todd Yukutake	Individual	Oppose	No

Comments:

I oppose SB295 as it does not allow for possession within a persons private property, workplace, or place of sojourn. It also does not make exceptions for instances of self-defense use. Please oppose or amend this bill.

Mahalo

Todd Yukutake
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todd@hifico.org

SB-295

Submitted on: 2/15/2021 1:13:23 PM

Testimony for PSM on 2/16/2021 1:20:00 PM

Submitted By	Organization	Testifier Position	Present at Hearing
Ian Shields	Individual	Oppose	No

Comments:

I oppose this bill.