



**TESTIMONY OF
THE DEPARTMENT OF THE ATTORNEY GENERAL
KA 'OIHANA O KA LOIO KUHINA
THIRTY-SECOND LEGISLATURE, 2024**

ON THE FOLLOWING MEASURE:
S.B. NO. 3034, RELATING TO PENAL LIABILITY.

BEFORE THE:
SENATE COMMITTEE ON JUDICIARY

DATE: Thursday, February 15, 2024 **TIME:** 9:30 a.m.

LOCATION: State Capitol, Room 016 and Videoconference

TESTIFIER(S): Anne E. Lopez, Attorney General, or
Michelle M.L. Puu, Deputy Attorney General

Chair Rhoads and Members of the Committee:

The Department of the Attorney General (Department) strongly supports this bill.

The purpose of this bill is to re-classify nonself-induced or pathological criminal intoxication defenses in section 702-230, Hawaii Revised Statutes (HRS), as affirmative defenses. An affirmative defense, as defined, in section 701-115(b), HRS, entitles the defendant to an acquittal if the trier of fact finds by a preponderance of the evidence, that penal liability should be negated by the defense and the prosecution fails to prove otherwise thereafter.

Currently, section 702-230, HRS, Intoxication, creates inequity in the judicial system when the Defendant raises, or infers the possibility of an intoxication defense to the prosecution months after the incident has occurred, when substantive and tangible evidence could have been tampered with, lost, or destroyed. Current law allows criminal defendants to raise intoxication defenses during the trial. When this defense is raised at such a late stage, the prosecution is left at a severe disadvantage. The prosecution and law enforcement are unable to thoroughly investigate such claims and standards of reasonable doubt shroud truth and justice.

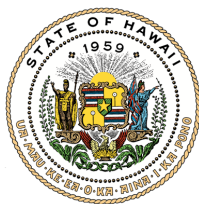
By amending section 702-230, HRS, to re-classify nonself-induced or pathological criminal intoxication defenses as affirmative defenses, the prosecution would still be required to prove its case beyond a reasonable doubt. However, the defendant's initial burden of proof would allow the prosecution to fully vet the legitimacy

of the defense and possible lack of supportive evidence. Should the prosecution not be able to meet its burden of proof, the defendant would have to be found not guilty.

The Department believes that fair and just prosecution of offenders is tantamount to its mission. This requires a thorough investigation into the legitimacy of defenses that the defendant may rely upon at trial. The characterization of these defenses as affirmative defenses would significantly increase the likelihood that related evidence would be properly preserved because both sides would have a vested interest in maintaining such evidence. This would ensure that cases are resolved based on actual evidence rather than upon the tactical delayed disclosure of defenses.

The Department respectfully asks the Committee to pass this bill. Thank you for your consideration of this request and opportunity to proffer our testimony in strong support.

JOSH GREEN, M.D.
GOVERNOR
KE KIA'ĀINA



JORDAN LOWE
DIRECTOR

MICHAEL VINCENT
Deputy Director
Administration

SYLVIA LUKE
LT GOVERNOR
KE KE'ENA

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JARED K. REDULLA
Deputy Director
Law Enforcement

TESTIMONY ON SENATE BILL 3034
RELATING TO PENAL LIABILITY

Before the Senate Committee on Judiciary
Thursday, February 15, 2024; 9:30 a.m.

State Capitol Conference Room 016 & Videoconference

WRITTEN TESTIMONY ONLY

Chair Rhoads, Vice Chair Gabbard, and Members of the Committee:

The Department of Law Enforcement **supports** this measure.

The measure expressly categorizes intoxication defenses under section 702-230, H.R.S. as affirmative defenses and makes other clarifying amendments.

The DLE is in support of amendments to penal statutes that will aid the prosecution of criminal offenses at the trial level. Adding a definition for "lacks substantial capacity" with additions on page 2, lines 9 to 12, clarifies the criminal conduct and is helpful for law enforcement when conducting investigations for offenses which involve intoxicated persons.

Thank you for the opportunity to submit testimony in **support**.

Rebecca V. Like
Prosecuting Attorney



Keola Siu
First Deputy
Prosecuting Attorney

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The Honorable Karl Rhoads, Chair
Senate Judiciary Committee
Thirty-third State Legislature, State of Hawai'i
Regular session of 2024
February 14, 2024
RE: SB 3034, Relating to Penal Liability

Dear Chair Rhoads:

I write in strong support of this bill.

The purpose of this bill is to designate non self-induced intoxication and pathological intoxication as affirmative defenses to a criminal charge. This bill is just in that if a person has experienced non self-induced intoxication or pathological intoxication, he or she will be afforded a defense if he or she can establish, by a preponderance of evidence, evidence that negates the alleged conduct or state of mind sufficient to establish an element of the offense. Currently, the government cannot negate these defenses unless it does so beyond a reasonable doubt.

Practically, a defendant is currently not required to identify witnesses to support these (non-affirmative) defenses until trial. Consequently, the government usually does not have sufficient time to gather its own evidence relevant to the defendant's non self-induced intoxication or pathological intoxication.

This bill (in conjunction with Rule 16(c)(2), Hawaii Rules of Penal Procedure), will have the effect of requiring the defense to disclose, in advance of trial, witnesses upon which it intends to rely to support its affirmative defense. (If it fails to do so, the court would act within its discretion by prohibiting the defense from establishing the affirmative defense at trial.) Consequently, this pre-trial disclosure will allow the government to investigate in a timely manner the relevant facts and circumstances concerning the defendant's claimed non self-induced intoxication and/or pathological intoxication. For example, as investigations of these defenses often involve identification of and interviews with at least one expert witness, the State will be much better able to identify an available expert witness in advance of trial.

Thank you for the opportunity to comment on this bill.

/s/ Rebecca V. Like
Prosecuting Attorney, County of Kaua'i

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