

STATE OF HAWAI‘I
OFFICE OF THE PUBLIC DEFENDER

**Testimony of the Office of the Public Defender,
State of Hawai‘i to the House Committee on
Judiciary & Hawaiian Affairs**

March 2, 2021

H.B. No. 785: RELATING TO FIREARMS

Chair Nakashima, Vice Chair Matayoshi, and Members of the Committee:

The Office of the Public Defender respectfully opposes H.B. No. 785.

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, sober or not.

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 H.B. No. 785.

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THE HONORABLE MARK M. NAKASHIMA, CHAIR
HOUSE COMMITTEE ON JUDICIARY AND HAWAIIAN AFFAIRS
Thirty-First State Legislature
Regular Session of 2021
State of Hawai`i

March 2, 2021

RE: H.B. 785; RELATING TO FIREARMS.

Chair Nakashima, Vice-Chair Matayoshi and members of the House Committee on Judiciary and Hawaiian Affairs, the Department of the Prosecuting Attorney of the City and County of Honolulu ("Department") submits the following testimony expressing concerns for H.B. 785.

The purpose of H.B. 785 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 H.B. 785 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 H.B. 785. Thank you for the opportunity to testify on this matter.

HB-785

Submitted on: 3/1/2021 10:47:01 AM

Testimony for JHA on 3/2/2021 2:00:00 PM

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

Comments:

The NRA opposes HB 785, 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.

HB-785

Submitted on: 2/26/2021 6:36:08 PM

Testimony for JHA on 3/2/2021 2:00:00 PM

Submitted By	Organization	Testifier Position	Present at Hearing
Ellen Godbey Carson	Individual	Support	No

Comments:

Firearms and intoxication are a deadly combination. This bill is a no-brainer. Please pass HB785 so that those who wish to use firearms will be deterred from doing so while intoxicated.

HB-785

Submitted on: 2/27/2021 8:43:34 AM

Testimony for JHA on 3/2/2021 2:00:00 PM

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

Comments:

I oppose. This is a "feel good" law. No one is allowed to carry a firearm loaded outside their residence in public. No open or conceal carry permits have been issued by Ballard, or any previous chief of police.

But this also excludes someone place of business. Some people do have a few beers once the work day is done. And if they need to use a firearm in self defense, they would be breaking the law.

HB-785

Submitted on: 2/28/2021 6:46:28 PM

Testimony for JHA on 3/2/2021 2:00:00 PM

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

Comments:

I oppose

HB-785

Submitted on: 2/28/2021 9:57:57 PM

Testimony for JHA on 3/2/2021 2:00:00 PM

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

Comments:

Will prevent the possession of a firearm at an individual's place of work, this not allowing he/she to defend themselves if a crime is being committed on them.

HB-785

Submitted on: 3/1/2021 11:18:19 AM

Testimony for JHA on 3/2/2021 2:00:00 PM

Submitted By	Organization	Testifier Position	Present at Hearing
Dan Goo	Individual	Oppose	No

Comments:

We oppose this bill as it does not say anything about self defense. If you are at home and having a few beers and you legally and lawfully need to defend yourself, would you be charged for this crime? This bill also does not say anything about your garage or curtilage.

Dan Goo Retired HPD Detective, US Marshals Service

Judy Goo, Sean Goo, Katherine Goo and Elisha Goo

HB-785

Submitted on: 3/1/2021 11:25:28 AM

Testimony for JHA on 3/2/2021 2:00:00 PM

Submitted By	Organization	Testifier Position	Present at Hearing
Dirck Sielken	Individual	Oppose	No

Comments:

This needs to be expanded to a person's property, work place and or place of sojourn.

HB-785

Submitted on: 3/1/2021 11:31:43 AM

Testimony for JHA on 3/2/2021 2:00:00 PM

Submitted By	Organization	Testifier Position	Present at Hearing
John D'Adamo III	Individual	Oppose	No

Comments:

I Oppose HB 785

HB-785

Submitted on: 3/1/2021 11:32:53 AM

Testimony for JHA on 3/2/2021 2:00:00 PM

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

Comments:

oppose

House Committee on Judiciary and Hawaiian Affairs
Representative Mark Nakashima, Chair
Representative Scot Matayoshi, Vice Chair

HEARING: March 2, 2021 at 2pm
RE: HB785 Relating to Firearms

I OPPOSE HB785 and REQUEST AMENDMENTS.

This bill is well intentioned to keep people safe however there are flaws with this bill that need to be corrected and improved public awareness can remove the need for this bill.

This bill only exempts the person's dwelling, or within the walls of their home. This bill should include the entirety of their private property as this bill does not address places like a person's yard or open garage. A person's workplace and place of sojourn also needs to be exempted. A self-defense exemption should also be included as crimes of violence can occur at anytime and a victim of that violence should not be prosecuted with a law like this.

Mahalo

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