



**Office of the Public Defender  
State of Hawaii  
Timothy Ho, Chief Deputy Public Defender**



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

January 25, 2013, 2:00 p.m.

**H.B. No. 246: RELATING TO INTOXICATING LIQUOR**

Chair Rhoads and Members of the Committee:

This measure would require a person convicted of promoting intoxicating liquor to a minor to serve a mandatory term of imprisonment for a first, second or third offense. The Office of the Public Defender opposes H. B. 3246.

The offense of promoting intoxicating liquor to a minor includes selling, serving, delivering or giving alcohol to a person under the age of twenty-one. It also involves the act of permitting a person under the age of twenty-one to consume alcohol on his or her property.

We agree with the proposal to reduce the classification of this offense from a full misdemeanor to a petty misdemeanor. The reclassification will reduce the maximum jail term from one year to thirty days, and will eliminate the defendant's right to a jury trial, leading to speedier resolution of these cases.

However, we do not believe that a first-time offender of this law should be required to serve a term of imprisonment; even it is for only twenty-four hours. Many people prosecuted under this law do not have a prior criminal record, and do not have any other involvement with the criminal justice system. Some offenders are convenience store clerks, restaurant or bar servers who are careless about checking the identification of the people they serve. For most, if not all of these people, the mere possibility of a jail sentence, as well as the courtroom experience will be enough to send a message that they cannot serve alcohol to minors. Other offenders could be people like you and me who serve alcohol at weddings, birthday parties and family gatherings. Should we be subjecting these people to a mandatory jail sentence? If the facts are particularly bad, the court will have the discretion to sentence the offender to up to thirty days in jail.

The progressive sentencing scheme proposed in this measure will also prevent an offender from deferring the acceptance of his guilty or no contest plea. I cannot remember a single case where a person convicted of this offense was sentenced to any jail time, other than credit for time served in conjunction with another offense.

We oppose the passage of H.B. No. 246. Thank you for the opportunity to be heard on this matter.

DEPARTMENT OF THE PROSECUTING ATTORNEY  
**CITY AND COUNTY OF HONOLULU**

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**THE HONORABLE KARL RHOADS, CHAIR  
HOUSE COMMITTEE ON JUDICIARY  
Twenty-sixth State Legislature  
Regular Session of 2012  
State of Hawai'i**

January 25, 2012

**RE: H.B. 246; RELATING TO INTOXICATING LIQUOR.**

Chair Rhoads, Vice Chair Har and members of the House Committee on Judiciary, the Department of the Prosecuting Attorney, City and County of Honolulu, submits the following testimony commenting on H.B. 246.

The purpose of this bill is to amend the offense of promoting intoxicating liquor to a person under the age of twenty-one to make it a petty misdemeanor rather than a misdemeanor. In addition, the bill provides that persons convicted of the offense serve mandatory terms of imprisonment.

When enacting new criminal penalties involving mandatory terms of imprisonment, it is important that the punishment is comparable to other similar crimes. This bill creates mandatory terms of imprisonment for promoting intoxicating liquor to a person under the age of twenty-one while other petty misdemeanor crimes in the Hawaii Revised Statutes such as section 711-1106 Harassment and section 711-1101 Disorderly Conduct does not have mandatory terms of imprisonment. It is important to note that the courts have discretionary authority to impose imprisonment on the defendant, as well as fines, fees, and other requirements.

Further, mandatory terms of imprisonment for promoting intoxicating liquor to a person under the age of twenty-one will potentially cause an increase in defendants fighting the charges and taking the case to trial, which will further congest our district courts and place cases involving "promoting intoxicating liquor to a person under the age of twenty-one" at risk of being dismissed since violent cases will have a higher priority when a deputy prosecuting attorney decides on what cases proceeds to trial for that day's court calendar.

Lastly, a misdemeanor penalty carries a one year imprisonment penalty that triggers the right for a defendant to request a jury trial. State v. Shak, 51 Haw. 680, 466 P.2d 422 (Haw. 1970). The reduction of the grade of this offense from a misdemeanor to a petty misdemeanor will permit more expeditious resolutions to these cases since they will be adjudicated by bench trials rather than jury trials. Jury trials take much longer than bench trials.

Thank for you the opportunity to testify on this matter.

**Justin F. Kollar**  
Prosecuting Attorney



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**TESTIMONY IN SUPPORT OF  
H.B. NO. 246  
A BILL FOR AN ACT RELATING TO INTOXICATING LIQUOR**

Justin F. Kollar, Prosecuting Attorney  
County of Kaua'i

House Committee on Judiciary

Friday, January 25, 2013  
2:00 p.m., Room 325

Honorable Chair Rhoads, Vice-Chair Har, and Members of the House Committee on Judiciary, the Office of the Prosecuting Attorney, County of Kaua'i submits the following testimony in support of House Bill No. 246.

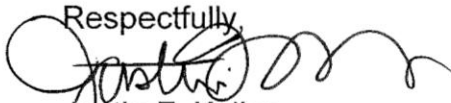
The purpose of House Bill No. 246 is to amend Section 712-1250.5 of the Hawai'i Revised Statutes as it relates to promoting intoxicating liquor to a person under the age of twenty-one.

House Bill No. 246 requires a minimum prison sentence for the first conviction, and proposes longer prison terms for second and third convictions. The bill also calls for the charge to be treated as a petty misdemeanor instead of a misdemeanor. While it may seem contradictory to reduce the offense level while imposing mandatory jail, it is actually well-reasoned because it removes the possibility of a jury trial while acknowledging that the offense is unlikely to result in the lengthier sentences possible for misdemeanor offenses.

In conclusion, the offenders that promote intoxicating liquor to those who are underage should receive heavier sanctions, which this bill would provide.

For these reasons, we strongly support House Bill No. 246. Thank you for the opportunity to testify on this matter.

Respectfully,

  
Justin F. Kollar  
Prosecuting Attorney  
County of Kaua'i