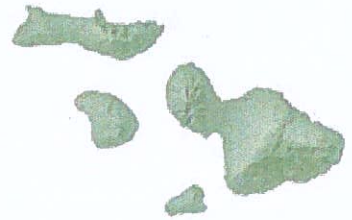
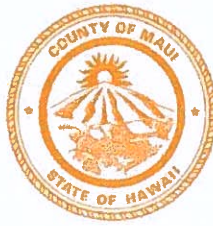


MICHAEL P. VICTORINO
Mayor

ROBERT D. RIVERA
Acting Prosecuting Attorney

ANDREW H. MARTIN
Second Deputy Prosecuting Attorney



DEPARTMENT OF THE PROSECUTING ATTORNEY
COUNTY OF MAUI
150 SOUTH HIGH STREET
WAILUKU, MAUI, HAWAII 96793
PHONE (808) 270-7777 • FAX (808) 270-7625

November 30, 2020

Michael J. Molina, Chair
Keani N.W. Rawlins-Fernandez, Vice-Chair
Governance, Ethics, and Transparency Committee

RE: Social Host Liability Regulations (GET-60)
Comments for Tuesday, December 1, 2020 meeting

Dear Chair Molina, Vice-Chair Rawlins-Fernandez, and Members of the Committee:

The Department of the Prosecuting Attorney supports the intent of the proposed social host liability regulations (GET-60), which is to impose strict liability upon a responsible person who hosts or permits a gathering where an underage person possesses or consumes an intoxicating substance.

The existing related criminal law is Promoting Intoxicating Liquor to a Person Under the Age of Twenty-One, Hawaii Revised Statutes § 712-1250.5. This law was enacted in 1984 due to the Legislature's "need to reduce the number of drunk drivers on Hawaii's roads and the number of deaths resulting from accidents involving drunk driving," and to "bring about a reduction of alcohol consumption by minors and a corresponding reduction in crime and in deaths and injuries." Conf. Com. Rep No. 9-84, Act 122, Session Laws 1984. Pertinently, under subsection (1)(b) of § 712-1250.5, it is a misdemeanor offense to "[p]ermit a person to possess intoxicating liquor while on property under his control and the person possessing the intoxicating liquor is a person under the age of twenty-one." The state of mind required to prove the criminal offense is a "reckless" state of mind.

The criminal offense therefore requires sufficient evidence to prove beyond a reasonable doubt that a person recklessly permitted an underage person to consume or possess alcohol on the property. A misdemeanor conviction carries a maximum \$2,000 fine and/or up to one year in jail. The social host proposal before this Committee is intended to complement the criminal law, by

Michael J. Molina, Chair
Keani N.W. Rawlins-Fernandez, Vice-Chair
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imposing strict liability for response costs and civil fines on a person who permits similar underage conduct at a gathering.

However, as currently written, we are concerned that the proposal does not impose "true" strict liability, because the definition of "responsible person" can be interpreted to require proof that the person conducts, aids, allows, permits or facilitates both (a) a gathering, and (b) the possession or consumption of a intoxicating substance by an underage minor. In other words, the "responsible person" can still claim many of the same defenses that could be claimed in a criminal prosecution.

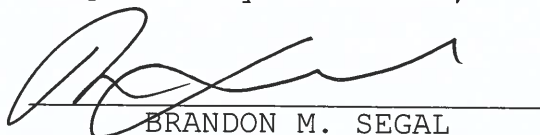
We suggest that the Committee incorporate the following revision, which we have previously suggested to Corporation Counsel:

"Responsible person" means a person with a right of possession to the residence or other private property on which a gathering occurs, such as a property owner, tenant, or lessee, or a person who conducts, aids, allows, permits, or facilitates a gathering. ~~where an underage person possesses or consumes an intoxicating substance.~~

Under subsection (B) of 9.40.030, the "responsible person" is then held strictly liable for any underage drinking / drug use that occurs at the gathering. This "strict liability" puts the onus on the responsible person to take affirmative steps to prevent underage consumption of intoxicating substances at a gathering. This proposed revision also closely patterns the Model Social Host Liability Ordinance suggested by the Center for the Study of Law and Enforcement Policy and the Ventura County Behavioral Health department in California.¹

We appreciate the Committee's attention to this matter, which we hope will deter underage drinking as well as help prevent impaired driving in our community. Please feel free to contact our Department if you have questions or require further clarification.

Respectfully submitted,



BRANDON M. SEGAL
Deputy Prosecuting Attorney
Vehicular Homicide and Traffic Safety Unit

¹<https://prevention.nd.gov/files/pfs/Model%20Social%20Host%20Policy.pdf>.