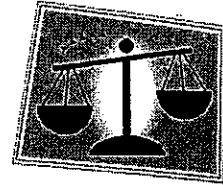




**Office of the Public Defender
State of Hawaii**



**Timothy Ho, Chief Deputy Public Defender
Testimony of the Office of the Public Defender,
State of Hawaii to the House Committee on Transportation**

March 1, 2011, 2:00 p.m.

RE: H.B. 393, HD1: Relating To Crime

Chair Keith-Agaran and Members of the Committee:

This measure seeks to impose mandatory driver's license revocation periods for individuals who are convicted of vehicular manslaughter and negligent homicide in the first and second degree. We believe that the court should be given the discretion to determine the appropriate length of the revocation period based on the circumstances of each individual case. Therefore, the Office of the Public Defender opposes H.B. 393, HD1.

The offenses of manslaughter and negligent homicide do not require proof of the driver's intoxication. The recent traffic fatality that occurred on Kauai where the father was driving with his young child on his lap resulted in his being arrested for manslaughter. Under this measure, the court would have no choice but to revoke this man's license for the rest of his life. We believe that a judge should be given the discretion to mete out a sentence that is just and fair to all sides. We do not believe that in this case, a lifetime license revocation is either just or fair.

We have attached a proposed HD2, which makes changes to section 1 of this measure, for your consideration. Thank you for the opportunity to comment on this measure.

A BILL FOR AN ACT

RELATING TO CRIME.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF HAWAII:

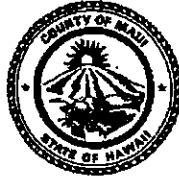
SECTION 1. Section 286-124, Hawaii Revised Statutes, is amended to read as follows:

"§286-124 **Mandatory revocation of license by a court.** (a) Any court of competent jurisdiction shall forthwith revoke for [life] [a period of not less than one but no more than ten years] the license of any driver upon a conviction of the driver of manslaughter resulting from the operation of a motor vehicle.

(b) Any court of competent jurisdiction shall forthwith revoke for a period of not less than [five] [one] year[s] but not more than ten years the license of any driver upon a conviction of the driver of negligent homicide in the first degree.

(c) Any court of competent jurisdiction shall forthwith revoke for a period of not less than [two][one] year[s] but not more than five years the license of any driver upon a conviction of the driver of negligent homicide in the second degree."

ALAN M. ARAKAWA
Mayor



JOHN D. KIM
Prosecuting Attorney
ROBERT D. RIVERA
First Deputy Prosecuting Attorney

DEPARTMENT OF THE PROSECUTING ATTORNEY
COUNTY OF MAUI
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Deputy Prosecuting Attorney
Supervisor, Appellate, Asset Forfeiture and Administrative Services Division

TESTIMONY OF THE
DEPARTMENT OF THE PROSECUTING ATTORNEY
COUNTY OF MAUI
ON
HB 393, HD 1 - RELATING TO CRIME
MARCH 1, 2011
2:00 P.M.

The Honorable Gilbert S.C. Keith-Agaran
Chair
The Honorable Karl Rhoads
Vice Chair
and Members
House Committee on Judiciary

Chair Keith-Agaran, Vice Chair Rhoads and members of the committee:

The Department of the Prosecuting Attorney, County of Maui supports this measure.

The amendments set forth in HB 393, HD 1 are important because they provide unambiguous guidance to the courts when sentencing defendants for Manslaughter.

The bill in its current form amends the existing law to make it clear that the license of any driver convicted of Manslaughter resulting from the operation of a motor vehicle shall be revoked for life. It also sets graduated license revocation periods for Negligent Homicide in the First and Second Degrees. Presently, the law is unclear as to the duration of a license suspension, and we had instances where defendants asked for reinstatement after one year.

Concerns expressed before the previous hearing on this bill involved what was perceived to be draconian license revocation periods. While we feel strongly that traffic fatalities involving reckless and negligent actions are serious offenses, particularly while under the influence of an

House Committee on Judiciary
HB 393, HD 1
March 1, 2011
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intoxicant, we propose that the bill be amended to: (1) give courts discretion to impose license revocation periods; and (2) limit the maximum license revocation period to be equal to the applicable period of probation. That is, for Manslaughter, the revocation period would be up to ten years; and the revocation period would be up to five years for Negligent Homicide in the First and Second Degrees. Attached is a proposed House Draft 2 version of the bill.

Further, the bill also expressly provides a sentencing court with the discretion to impose a term of imprisonment of up to two (2) years as a condition of probation involving Manslaughter. The proposed HD 2 version attached makes an amendment HRS § 706-659, to further clarify that probation is an applicable sentence for Manslaughter.

Currently, the law is not clear about: (1) whether a sentence of probation is possible for a Manslaughter conviction; and (2) if probation is imposed, what is the amount of jail time a court may impose. Courts and prosecutors throughout the State have different interpretations. This apparent glitch in the law was probably an oversight when Manslaughter was changed from a class B felony to a class A felony in 1996. This bill will provide the necessary clarification.

The Department of the Prosecuting Attorney, County of Maui, requests that this measure be **PASSED AS AMENDED** in an HD 2 version as set forth in our proposed draft. Thank you very much for the opportunity to provide this testimony.

A BILL FOR AN ACT

RELATING TO CRIME.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF HAWAII:

SECTION 1. Section 286-124, Hawaii Revised Statutes, is amended to read as follows:

"§286-124 Mandatory revocation of license by a court. (a)

Any court of competent jurisdiction shall forthwith revoke the license of any driver for a period of up to ten years upon a conviction of the driver of manslaughter resulting from the operation of a motor vehicle.

(b) Any court of competent jurisdiction shall forthwith revoke the license of any driver for a period of up to five years upon a conviction of the driver of negligent homicide in the first degree or negligent homicide in the second degree."

SECTION 2. Section 706-624, Hawaii Revised Statutes, is amended by amended subsection (2) to read as follows:

"(2) Discretionary conditions. The court may provide, as further conditions of a sentence of probation, to the extent

that the conditions are reasonably related to the factors set forth in section 706-606 and to the extent that the conditions involve only deprivations of liberty or property as are reasonably necessary for the purposes indicated in section 706-606(2), that the defendant:

- (a) Serve a term of imprisonment not exceeding two years in class A felony cases under part IV of chapter 712, and by section 707-702, eighteen months in class B felony cases, one year in class C felony cases, six months in misdemeanor cases, and five days in petty misdemeanor cases; provided that notwithstanding any other provision of law, any order of imprisonment under this subsection that provides for prison work release shall require the defendant to pay thirty per cent of the defendant's gross pay earned during the prison work release period to satisfy any restitution order. The payment shall be handled by the adult probation division and shall be paid to the victim on a monthly basis;
- (b) Perform a specified number of hours of services to the community as described in section 706-605(1)(d);
- (c) Support the defendant's dependents and meet other family responsibilities;
- (d) Pay a fine imposed pursuant to section 706-605(1)(b);

- (e) Work conscientiously at suitable employment or pursue conscientiously a course of study or vocational training that will equip the defendant for suitable employment;
- (f) Refrain from engaging in a specified occupation, business, or profession bearing a reasonably direct relationship to the conduct constituting the crime or engage in the specified occupation, business, or profession only to a stated degree or under stated circumstances;
- (g) Refrain from frequenting specified kinds of places or from associating unnecessarily with specified persons, including ~~[but not limited to]~~ the victim of the crime, any witnesses, regardless of whether they actually testified in the prosecution, law enforcement officers, co-defendants, or other individuals with whom contact may adversely affect the rehabilitation or reformation of the person convicted;
- (h) Refrain from use of alcohol or any use of narcotic drugs or controlled substances without a prescription;
- (i) Refrain from possessing a firearm, ammunition, destructive device, or other dangerous weapon;
- (j) Undergo available medical or mental health treatment, including treatment for substance abuse dependency,

and remain in a specified facility if required for that purpose;

- (k) Reside in a specified place or area or refrain from residing in a specified place or area;
- (l) Submit to periodic urinalysis or other similar testing procedure;
- (m) Refrain from entering specified geographical areas without the court's permission;
- (n) Refrain from leaving the person's dwelling place except to go to and from the person's place of employment, the office of the person's physician or dentist, the probation office, or any other location as may be approved by the person's probation officer pursuant to court order. As used in this paragraph, "dwelling place" includes the person's yard or, in the case of condominiums, the common elements;
- (o) Comply with a specified curfew;
- (p) Submit to monitoring by an electronic monitoring device; or
- (q) Satisfy other reasonable conditions as the court may impose."

SECTION 3. Section 706-659, Hawaii Revised Statutes, is amended to read as follows:

"§706-659. Sentence of imprisonment for class A felony.

Notwithstanding part II; sections 706-605, 706-606, 706-606.5,

706-660.1, 706-661, and 706-662; and any other law to the contrary, a person who has been convicted of a class A felony, except class A felonies defined in chapter 712, part IV, or section 707-702, shall be sentenced to an indeterminate term of imprisonment of twenty years without the possibility of suspension of sentence or probation. The minimum length of imprisonment shall be determined by the Hawaii paroling authority in accordance with section 706-669. A person who has been convicted of a class A felony defined in chapter 712, part IV, or section 707-702, may be sentenced to an indeterminate term of imprisonment, except as provided for in section 706-660.1 relating to the use of firearms in certain felony offenses and section 706-606.5 relating to repeat offenders. When ordering such a sentence, the court shall impose the maximum length of imprisonment which shall be twenty years. The minimum length of imprisonment shall be determined by the Hawaii paroling authority in accordance with section 706-669."

SECTION 4. This Act does not affect rights and duties that matured, penalties that were incurred, and proceedings that were begun, before its effective date.

SECTION 5. New statutory material is underscored.

SECTION 6. This Act shall take effect upon its approval.

PURPOSE:

Amends drivers license revocation provision to allow license revocation for a period of time up to maximum term of probation when a driver is convicted of manslaughter involving a vehicle or for negligent homicide in the first or second degrees; allows for up to two years of imprisonment when a convicted defendant is sentenced to probation for manslaughter; clarifies the law to specify that probation is an available sentence for manslaughter.



ALAN M. ARAKAWA

MAYOR

OUR REFERENCE

YOUR REFERENCE

POLICE DEPARTMENT
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GARY A. YABUTA
CHIEF OF POLICE

CLAYTON N.Y.W. TOM
DEPUTY CHIEF OF POLICE

February 25, 2011

The Honorable Gilbert S.C. Keith-Agaran, Chair
and Member of the Committee on Judiciary
House of Representative
State Capitol
Honolulu, Hawaii 96813

RE: House Bill No. 393, HD1, Relating to Crime

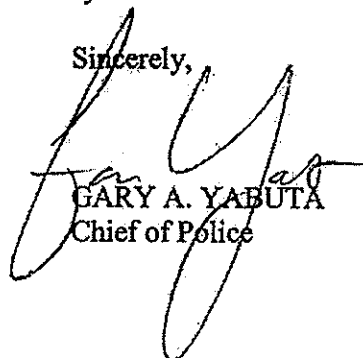
Dear Chair Keith-Agaran and Members of the Committee:

The Maui Police Department supports H. B. No. 393, HD1. The ability to possess a Hawaii driver's license is a privilege not a right. There are situations when the actions of the individual dictate that those privileges should be revoked. This bill amends the driver's license revocation provision to require a lifetime revocation for manslaughter involving the operation of a vehicle, five to ten years for negligent homicide in the first degree, and two to five years for negligent homicide in the second degree. This bill allows for up to two years of imprisonment when a convicted defendant is sentenced to probation for manslaughter.

The Maui Police Department asks for your support on H.B. No. 393, HD1.

Thank you for the opportunity to testify.

Sincerely,



GARY A. YABUTA
Chief of Police