

HB 393,  
HD2



**TESTIMONY OF  
THE DEPARTMENT OF THE ATTORNEY GENERAL  
TWENTY-SIXTH LEGISLATURE, 2011**

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ON THE FOLLOWING MEASURE:

H.B. NO. 393, H.D. 2, RELATING TO CRIME.

BEFORE THE:

SENATE COMMITTEE ON TRANSPORTATION AND INTERNATIONAL AFFAIRS

DATE: Monday, March 21, 2011 TIME: 1:18 p.m.

LOCATION: State Capitol, Room 224

TESTIFIER(S): David M. Louie, Attorney General, or  
Lance M. Goto, Deputy Attorney General

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Chair English and Members of the Committee:

The Attorney General supports this bill.

This bill has two purposes related to the sentencing of those convicted of certain homicide offenses. The first purpose is to provide for license revocation periods that are appropriate and justified for those who have been convicted of serious traffic-related fatalities. The second purpose is to clarify that a court may sentence a defendant convicted of manslaughter to two years of imprisonment as a condition of probation.

LICENSE REVOCATION PERIODS

Section 286-124, Hawaii Revised Statutes, currently requires the court to revoke the license of any driver convicted of a manslaughter offense resulting from the operation of a motor vehicle, but it does not specify any time period for the mandatory revocation. While section 286-125, Hawaii Revised Statutes, gives the court the discretion to revoke the license of any driver convicted of a felony offense involving the use of a motor vehicle, it does not specify a time period for the revocation.

This bill amends the driver's license revocation provisions to require a license revocation for a period of: (1) up to ten years for persons convicted of manslaughter, for recklessly causing a person's death while driving a vehicle; and (2) up to five years for persons convicted of either negligent homicide in the first degree, a class B felony, or negligent homicide in the second degree, a class C felony. A person is guilty of negligent homicide in the first degree when the person causes another person's death while operating a vehicle in a negligent manner while under the influence of drugs or alcohol. A person is guilty of negligent homicide in the second degree when the person causes another person's death while operating a vehicle in a negligent manner. These provisions, while setting maximum possible terms for the mandatory license revocations, leave the court with discretion to determine the specific period of revocation that should be imposed to protect the public from these dangerous drivers.

#### PROBATION SENTENCING FOR MANSLAUGHTER

The law is not clear about the imposition of a term of imprisonment as a condition of probation, for a person convicted of manslaughter.

Section 706-624(2)(a), Hawaii Revised Statutes, establishes what a court may impose as conditions of probation, but it does not provide for any term of imprisonment for manslaughter. It allows a court to sentence a defendant to a term of up to two years of imprisonment as a condition of probation for class A felony drug offenses, but is silent as to a condition for manslaughter.

This bill corrects this oversight by amending section 706-624(2)(a) to allow a court to sentence a defendant convicted of manslaughter to a term of up to two years of imprisonment as a condition of probation.

To further clarify the probation sentencing issue for manslaughter, this bill also amends section 706-659, Hawaii Revised Statutes. Section 706-659 currently provides that persons convicted of class A felony offenses, except for class A felony drug offenses under chapter 712, Hawaii Revised Statutes, must be sentenced to indeterminate terms of imprisonment of twenty years. It does not currently provide an exception for the class A felony manslaughter offense, thereby indicating that a person convicted of manslaughter must be sentenced to an indeterminate prison term and not probation. This provision is not consistent with section 706-620(2), Hawaii Revised Statutes, which does allow for a sentence of probation for the class A felony offense of manslaughter. This bill amends section 706-659 to conform to section 706-620(2).

We respectfully request passage of this measure.

ALAN M. ARAKAWA  
Mayor



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

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TESTIMONY OF THE  
DEPARTMENT OF THE PROSECUTING ATTORNEY  
COUNTY OF MAUI  
ON  
HB 393, HD 2 - RELATING TO CRIME  
MARCH 21, 2011  
1:18 P.M.

The Honorable J. Kalani English  
Chair  
The Honorable Will Espero  
Vice Chair  
and Members  
Senate Committee on Transportation and International Affairs

Chair English, Vice Chair Espero 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 2 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 may be revoked for up to ten years, and may be revoked for up to five years for Negligent Homicide in the First and Second Degrees. This limits the revocation periods to the maximum probation term applicable to each offense, and gives the courts additional discretion by allowing them to impose license revocation periods for "up to" the maximum revocation period.

Further, the bill expressly provides that probation is an applicable sentencing alternative for Manslaughter, and gives a sentencing court the discretion to impose a term of imprisonment

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of up to two (2) years as a condition of probation. 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 as a condition of probation. Courts and prosecutors throughout the State have different interpretations. Some believe that imprisonment is the only option. Others believe that probation is possible, but there is no provision to allow for a period of imprisonment as a condition of probation. This glitch in the law was probably an oversight when Manslaughter was changed from a class B felony to a class A felony in 1996. HB 393, HD 2 will provide the necessary clarification.

The Department of the Prosecuting Attorney, County of Maui, requests that this measure be PASSED. Thank you very much for the opportunity to testify.



Mothers Against Drunk Driving HAWAII  
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March 21, 2011

To: Senator J. Kalani English, Chair –Senate Committee on Transportation and International Affairs; Senator Will Espero, Vice Chair and members of the Committee

From: Carol McNamee—Chairman, Public Policy Committee - MADD Hawaii

Re: House Bill 393, HD 2 – Relating to Highway Safety

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I am Carol McNamee, offering testimony on behalf of the Hawaii Chapter of Mothers Against Drunk Driving in support of HB 393, HD 2.

It seems logical that loss of an offender's driver's license should be a consequence of driving impaired or with extreme recklessness, causing the death of another person. From the standpoint of the families of victims, it would be important to know that the person responsible for the death of a loved one is not able to legally drive on Hawaii's roads for a significant period of time.

MADD also recommends that license revocation be part of the sanction for negligent injury.

Now that Ignition Interlock devices are available in Hawaii, MADD suggests that the installation of this device on the offender's vehicle be an option for those individuals who were under the influence of alcohol or alcohol in combination with other substances at the time of the crash resulting in a person's death. The device should remain on the vehicle for the period of revocation. This will prevent the offender from being able to again drive impaired as long as the interlock is installed in his or her vehicle.

Thank you for the opportunity to testify.

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**From:** mailinglist@capitol.hawaii.gov  
**Sent:** Wednesday, March 16, 2011 1:57 AM  
**To:** TIATestimony  
**Cc:** swartzg001@hawaii.rr.com  
**Subject:** Testimony for HB393 on 3/21/2011 1:18:00 PM

Testimony for TIA 3/21/2011 1:18:00 PM HB393

Conference room: 224  
Testifier position: oppose  
Testifier will be present: No  
Submitted by: gregory swartz  
Organization: Individual  
Address:  
Phone:  
E-mail: [swartzg001@hawaii.rr.com](mailto:swartzg001@hawaii.rr.com)  
Submitted on: 3/16/2011

Comments:  
Why would we even consider reducing penalties for DUIs resulting in deaths?