



**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**

February 16, 2012, 2:40 p.m.

H.B. No. 1666, H.D. 1: RELATING TO THE PENAL CODE

Chair Keith-Agaran and Members of the Committee:

This measure would create a new category of victim called a "vulnerable user," such as a pedestrian, bicyclist or roadway worker. Anyone convicted of negligent homicide or negligent injury against a vulnerable user would be subjected to mandatory enhanced sentencing. The Office of the Public Defender strongly opposes H.B. 1666, H.D. 1.

This measure is overbroad and overreaching, especially since the state of mind for these offenses is negligence. A negligent state of mind does not require actual the knowledge of the existence of a substantial and unjustifiable risk. It does not require the actor to actively disregard a substantial and unjustifiable risk. It just requires that the actor should have been aware of or should have known of the existence of the substantial and unjustifiable risk. In other words, the actor need not have acted intentionally, knowingly or recklessly. To mandate a lengthy jail term for a negligent act is excessive. The definition of a 'vulnerable user' is overbroad, and includes anyone who could possibly be injured by a motorist.

Some motorists who have killed or injured others in a negligent manner are more culpable than others. A person who is inebriated and/or driving at an excessive rate of speed may be deserving of a sentence of imprisonment. There or others, however, who are less culpable, and deserving of probation, or deferred prosecution. The court, after hearing all of the facts, should have the discretion to impose an appropriate sentence.

The state of mind required to prove the offense of negligent homicide in the third degree is simple negligence, which is means any negligence, and does not require a gross deviation from the standard of care from that of a law-abiding person. Our office represented a person who was charged with negligent homicide in the third degree after he swerved to avoid hitting a dog, and lost control of his car, knocking over a backyard wall, which fell and killed an elderly woman who had been tending to her garden on the other side of the wall. The driver had not been speeding excessively and had no prior criminal or traffic record. What if instead of hitting a wall that fell on a woman, he hit a light pole that fell on a pedestrian waiting to cross the street. Should a person like this,

who is involved in an accident, be sentenced to five years imprisonment with a one-year mandatory minimum? Should this person not be allowed to receive consideration for a deferral?

The elevation of sentences for a misdemeanor and class C felony to a class C felony and a class B felony respectively is confusing, and also excessive. Under this measure, a negligent homicide in the second-degree involving a vulnerable user would have the same classification as a negligent homicide in the first-degree charge. Both cases would be class B felonies. In addition to the confusion caused by the elevation of the class of offenses involving "vulnerable users," and the unfairness of meting out increased penalties for a specialized group of people as a result of a motor vehicle accident, this measure will create an additional layer of proof for the prosecution. Current case law requires a separate jury verdict in order to sentence a defendant to an extended term of imprisonment. It is very likely that after a conviction for negligent homicide or injury, the jury would have to be reconvened in order to determine whether the decedent or injured person was a "vulnerable user," which will add time and court costs to the trial.

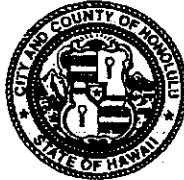
The difference between simple negligence and no negligence can be miniscule at times. A driver could have averted their eyes from the road for a split second, or be travelling only a few miles over the speed limit and found to be simply negligent. The very low standard of proof in these cases means that in many cases, drivers will be deserving of deferred prosecution. Under this measure, such individuals would be sentenced to a mandatory term of imprisonment.

The Office of the Public Defender opposes H. B. 1666, H.D. 1. Thank you for the opportunity to be heard on this matter.

POLICE DEPARTMENT
CITY AND COUNTY OF HONOLULU

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OUR REFERENCE KK-LC

February 16, 2012

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

Dear Chair Keith-Agaran and Members:

Subject: House Bill No. 1666, H.D.1, Relating to the Penal Code

I am Kurt Kendro, Major of the Traffic Division of the Honolulu Police Department (HPD), City and County of Honolulu.

The HPD supports the passage of House Bill No. 1666, H.D.1, Relating to the Penal Code.


The passage of this bill would amend the penalties of certain crimes if the victim is identified as a vulnerable user as defined in the bill. The HPD believes that all highways and roadways should be safe for everyone, and this bill is a strong deterrent to motorists who disregard the laws. It will also encourage drivers to be more cautious and attentive to better protect those identified as vulnerable users.

Thank you for the opportunity to testify.

Sincerely,

APPROVED:


LOUIS M. KEALOHA
Chief of Police


KURT KENDRO, Major
Traffic Division



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Testimony in Support of HB 1666, HD1 RELATING TO THE PENAL CODE
JUD 2:40p.m. Rm 325 2/16/12
Rep. Gilbert S.C. Keith-Agaran, Chair; Rep. Karl Rhoads, Vice Chair
Submitted by Chad Taniguchi, Executive Director, Hawaii Bicycling League

Protect all vulnerable road users!

The Hawaii Bicycling League, along with other bicycling and walking organizations statewide, asks all road users to heed Kamehameha's Law of the Splintered Paddle because "Everyone has the right to be safe on Hawaii's roads."

Mutual safety and concern for others is of utmost importance on the public roads for motorists, pedestrians, bicyclists, and other users of our public road system. This is a shared space that we must use carefully. King Kamehameha decreed in 1797 that "everyone has the right to be safe on Hawaii's roads – including old and young, women and children." Mamalahoe Kanawai (Law of the Splintered Paddle).

Now 215 years later we have large, fast machines capable of killing instantly if the operators are not careful.

We extend our deepest condolences to the families of Officers Garret Davis and Eric Fontes, and to Chief Kealoha and members of the Honolulu Police Department, who daily risk their lives to protect our safety. It is a tragedy when anyone is killed or seriously injured on our public roads because these crashes can be avoided by obeying the speed limits and concentrating to adjust to changing conditions.

We support the proposed Vulnerable Road Users bill (HB 1666) that seeks to protect police, emergency road workers, pedestrians, bicyclists, and others who use the roads without a protective metal shell.

The Hawaii Bicycling League met and consulted with the Honolulu Police Department on drafts of this bill.

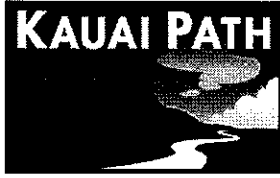
Please let me know if there are any questions.

Ride Aloha! Drive Aloha!

Everyone has the right to be safe on Hawaii's roads.

Mamalahoe Kanawai, Kamehameha's Law of the Splintered Paddle 1797, Hawaii state constitution 1978

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Regarding HB 1666 --Supporting

February 15, 2012

Dear Rep. Gilbert S.C. Keith-Agaran, Chair and Committee Members

From: Randall Blake, Executive Director, Kauai Path Inc.

We now find the State of Hawaii is placing a great danger to our aging population, Hawaii leads the nation--1st, in vehicular crashes for pedestrians over the age of sixty, is 11th for pedestrians of all ages and is 12th in the nation for bicycle fatalities.

We are asking you to increase fines and punishment for those who injury the vulnerable users of the public right of way. Who are they? They are our family walking along the road after a car breakdown, our sons or daughters riding home from a friend's house, or uncle out working on the roadway.

HB 1666 does not establish a new criminal offense; it simply increases the penalty for existing driving infractions that lead to tragic outcomes for vulnerable roadway users.

We strongly request your support, so Hawaii can lead the nation toward safer roadways for all users.

Mahalo

Randall Blake

Date: February 15, 2012

REF: Judiciary Committee Hearing of HB 1666

I am submitting testimony in support of HB 1666, The Vulnerable Users Bill, which provides an extra measure of deterrence and protection on public roadways for first responders, cyclists, pedestrians, and highway workers from dangerous drivers. The reason we need a vulnerable users law is that Hawaii is among the worst in the nation for rates of fatality to cyclists and pedestrians, and negligent and aggressive driving are getting worse. This measure addresses the consequences to drivers from a traffic violation in which a vulnerable user is seriously injured or killed and would educate drivers to be more careful and allow the courts to bring justice for victims and their families.

Some defense attorneys may think it too harsh, but a maimed or killed innocent person is just as ruined from a negligent act as an intentional one, and it is just that the state to act to prevent and punish these acts with a sentence that is balanced with the injury done to the victim. That is what this bill does.

I want tougher penalties for negligent and inattentive drivers who maim or kill first responders, bicyclists, pedestrians, and other vulnerable roadway users. These penalties help reinforce the need to be careful when driving in close proximity to people who do not have the protection of a car and are exposed to traffic.

Washington, Oregon, and Texas are among other states with similar measures in law; the precedent is well established. Let's join them in holding negligent drivers accountable when they injure or kill first responders, bicyclists, pedestrians, and other vulnerable roadway users. I am in favor of HB 1666.

Sincerely,

Robert Bengtson
5427 Kuaola Street
Honolulu, HI 96821

Testimony for HB1666 on 2/16/2012 2:40:00 PM

Testimony for HB1666 on 2/16/2012 2:40:00 PM

mailinglist@capitol.hawaii.gov [mailinglist@capitol.hawaii.gov]

Sent: Wednesday, February 15, 2012 9:10 AM

To: JUDtestimony

Cc: pdunn@hawaii.edu

Testimony for JUD 2/16/2012 2:40:00 PM HB1666

Conference room: 325
Testifier position: Support
Testifier will be present: No
Submitted by: Patricia Dunn
Organization: Individual
E-mail: pdunn@hawaii.edu
Submitted on: 2/15/2012

Comments:

I commute to the University of Hawaii Manoa from Kahala on my bicycle along Waiialae Avenue at least three or four days a week. I am a board member of Hawaii Bicycling League, co-chair of the University of Hawaii Manoa Bicycle Committee and one of the founding members of the Red Hot Ladies Cycling Club which is a cycling club for women 50 and older. Many of us have worked to make Hawaii's roadways safer for our most vulnerable users, pedestrians and cyclist. Despite our efforts, we as a state continue to have one of the highest fatality rates for pedestrians and cyclist. Motorists must be held accountable for their inattention and disregard. There must be more than a slap on the wrist when you are responsible for the death or injury of our most vulnerable users. We all have a right to be safe on our roadways no matte what our transportation choice may be.

Testimony for HB1666 on 2/16/2012 2:40:00 PM

Testimony for HB1666 on 2/16/2012 2:40:00 PM

mailinglist@capitol.hawaii.gov [mailinglist@capitol.hawaii.gov]

Sent: Thursday, February 16, 2012 8:47 AM

To: JUDtestimony

Cc: edjohnson908@gmail.com

Testimony for JUD 2/16/2012 2:40:00 PM HB1666

Conference room: 325

Testifier position: Support

Testifier will be present: Yes

Submitted by: ed johnson

Organization: Individual

E-mail: edjohnson908@gmail.com

Submitted on: 2/16/2012

Comments:

A large number of us have been working in every way possible to make riding & walking safer in Hawai'i but nothing much is helping. We still end up having some of the highest fatality rates in the nation for pedestrians and bicyclists. We are now ready to try the punishment approach, which does sometimes seem to work in Hawai'i, and establish penalties for mowing down our most vulnerable users of the roadways - walkers, bicycle riders, & people trying to help others. If the new law saves one life, it would be worth it, since it could be any of us any day who walk & pedal regularly. Mahalo for your consideration.

Testimony for HB1666 on 2/16/2012 2:40:00 PM

Testimony for HB1666 on 2/16/2012 2:40:00 PM

mailinglist@capitol.hawaii.gov [mailinglist@capitol.hawaii.gov]

Sent: Thursday, February 16, 2012 9:00 AM

To: JUDtestimony

Cc: karibenes@gmail.com

Testimony for JUD 2/16/2012 2:40:00 PM HB1666

Conference room: 325
Testifier position: Support
Testifier will be present: No
Submitted by: Kari Benes
Organization: Individual
E-mail: karibenes@gmail.com
Submitted on: 2/16/2012

Comments:

Aloha Members of the House Judiciary Committee,

Please support this bill. As both a bicyclist, walker, and driver, it is important to exercise caution for others on the road. More than 30% of Hawaii's population, can not or choose not to drive, they should not be treated as second class citizens because they are not wrapped in steal.

Thank you for hard work,

Kari Benes
Kaimuki Resident

Testimony for HB1666 on 2/16/2012 2:40:00 PM

Testimony for HB1666 on 2/16/2012 2:40:00 PM

mailinglist@capitol.hawaii.gov [mailinglist@capitol.hawaii.gov]

Sent: Wednesday, February 15, 2012 10:16 AM

To: JUDtestimony

Cc: jgoody@hawaii.rr.com

Testimony for JUD 2/16/2012 2:40:00 PM HB1666

Conference room: 325

Testifier position: Support

Testifier will be present: No

Submitted by: John Goody

Organization: Hawaii Bicycling League

E-mail: jgoody@hawaii.rr.com

Submitted on: 2/15/2012

Comments:

Hawaii's roads are among the most dangerous in the country for pedestrians, cyclists and others who legally make use of the public right of way without being in a motor vehicle. The reason is simple, some drivers are aggressive or negligent, and don't drive safely. When this results in an accident between two motor vehicles, it is often no more than a fender bender; but when it occurs between a motor vehicle and a vulnerable roadway user, it is often catastrophic to the unprotected user.

Many of our State's goals for energy independence, air and water quality, public health and wellness, management of public medical expense, and transportation efficiency are in part dependent on allowing folks to get out of their cars for appropriate length trips, and get about under their own power. These are trips that can be walked or biked, or for which walking or biking connects to a public transit stop. But people will be afraid to get out of their cars if our roadways are not made safer for mixed transportation modes. Driver behavior is critical to this end. Today, harmfully striking a vulnerable roadway user often results in no more than a traffic ticket regardless of the harm done to the victim; HB1666 will apply a fair penalty on those who commit a traffic offence and in the process kill or maim another. It will encourage drivers to take greater care when operating their vehicle in the proximity of vulnerable roadway users. It is fair and just that doing serious harm to another person be penalized commensurately, at least in part, to the harm done.

Thank you for approving this measure.