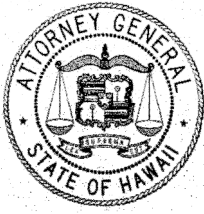


HB1791



**TESTIMONY OF
THE DEPARTMENT OF THE ATTORNEY GENERAL
TWENTY-SIXTH LEGISLATURE, 2012**

ON THE FOLLOWING MEASURE:

H.B. NO. 1791, RELATING TO HOMICIDE.

BEFORE THE:

SENATE COMMITTEE ON JUDICIARY AND LABOR

DATE: Thursday, March 29, 2012

TIME: 10:30 a.m.

LOCATION: State Capitol, Room 016

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

Chair Hee and Members of the Committee:

The Department of the Attorney General strongly 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 (HRS), 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, HRS, 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), HRS, 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.

By amending section 706-624(2)(a), this bill makes clear the Legislature's intent 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, HRS. Section 706-659 currently provides that persons convicted of class A felony offenses, except for class A felony drug offenses under chapter 712, HRS, 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), HRS, 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 that the committee pass this bill.

POLICE DEPARTMENT
CITY AND COUNTY OF HONOLULU

801 SOUTH BERETANIA STREET · HONOLULU, HAWAII 96813
TELEPHONE: (808) 529-3111 · INTERNET: www.honolulu.org

PETER B. CARLISLE
MAYOR



LOUIS M. KEALOHA
CHIEF

DAVE M. KAJIHIRO
MARIE A. McCAULEY
DEPUTY CHIEFS

OUR REFERENCE KK-LC

March 29, 2012

The Honorable Clayton Hee, Chair
and Members
Committee on Judiciary and Labor
The Senate
State Capitol
Honolulu, Hawaii 96813

Dear Chair Hee and Members:

Subject: House Bill No. 1791, Relating to Homicide

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

The HPD strongly supports the passage of House Bill No. 1791, Relating to Homicide.

This bill amends the driver's license revocation provisions for those drivers convicted of manslaughter resulting from the operation of a vehicle or convicted of negligent homicide in the first or second degree. This bill will strengthen the legal consequences for those persons convicted of these serious crimes.

Thank you for the opportunity to testify.

Sincerely,

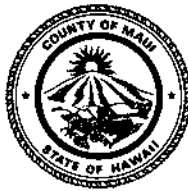
A handwritten signature in black ink, appearing to read "Kurt Kendro", is written over a printed name and title.

KURT KENDRO, Major
Traffic Division

APPROVED:

A handwritten signature in black ink, appearing to read "Louis M. Kealoa", is written over a printed name and title.

LOUIS M. KEALOHA
Chief of Police



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

CONTACT: RICHARD. K. MINATOYA
Deputy Prosecuting Attorney
Supervisor, Appellate, Asset Forfeiture and Administrative Services Division

TESTIMONY

ON

HB 1791 - RELATING TO HOMICIDE

March 29, 2012

The Honorable Clayton Hee
Chair
The Honorable Maile S. L. Shimabukuro
Vice Chair
and Members
Senate Committee on Judiciary and Labor

Chair Hee, Vice Chair Shimabukuro and Members of the Committee:

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

The provisions of this bill are important because they provide unambiguous guidance to the courts when sentencing defendants for Manslaughter. Specifically, 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 may be revoked for up to ten (10) years, and may be revoked for up to five (5) 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 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. This bill 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.

From: mailinglist@capitol.hawaii.gov
To: [JDLTestimony](#)
Cc: toddhairgrove@hotmail.com
Subject: Testimony for HB1791 on 3/29/2012 10:30:00 AM
Date: Tuesday, March 27, 2012 10:37:42 AM

Testimony for JDL 3/29/2012 10:30:00 AM HB1791

Conference room: 016
Testifier position: Support
Testifier will be present: Yes
Submitted by: Todd Hairgrove
Organization: Individual
E-mail: toddhairgrove@hotmail.com
Submitted on: 3/27/2012

Comments:
Yes Please pass bill