



**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:
HOUSE COMMITTEE ON JUDICIARY

DATE: Thursday, February 16, 2012 **TIME:** 2:40 p.m.
LOCATION: State Capitol, Room 325
TESTIFIER(S): David M. Louie, Attorney General, or
Lance M. Goto, Deputy Attorney General

Chair Keith-Agaran 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.

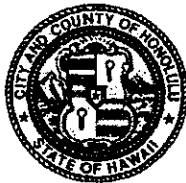
By amending section 706-624(2)(a), this bill makes clear the Legislature's intent to allow a court to sentence a defendant convicted of manslaughter to a term of up to two years of imprisonment as a condition of probation.

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

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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. 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 negligent homicide in the first or
second degree. This bill will strengthen the legal consequences for those persons convicted of
these serious crimes.

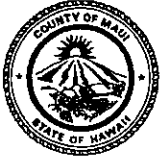
Thank you for the opportunity to testify.

Sincerely,


KURT KENDRO, Major
Traffic Division

APPROVED:


LOUIS M. KEALOHA
Chief of Police



ALAN M. ARAKAWA
MAYOR

OUR REFERENCE
YOUR REFERENCE

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GARY A. YABUTA
CHIEF OF POLICE

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

February 16, 2012

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

RE: HB No. 1791, RELATING TO HOMICIDE

Dear Chair Keith-Agaran and Members of the Committee:

The Maui Police Department supports the passage of HB No. 1791. The passage of this bill will require drivers' license revocations upon convictions for negligent homicide in either the first or second degree. It will also set maximum periods of license revocations for convictions of manslaughter and negligent homicide in the first or second degree, make imprisonment of up to two years a discretionary condition of probation for manslaughter convictions, and it will clarify that probation is an available sentence for manslaughter. As such, this bill satisfies several key issues that we have requested in a previously supported bill similar to HB No. 2470.

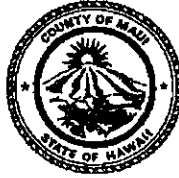
The Maui Police Department asks that you support the passage of HB No. 2470.

Thank you for the opportunity to testify.

Sincerely,


GARY A. YABUTA
Chief of Police

ALAN M. ARAKAWA
Mayor



JOHN D. KIM
Prosecuting Attorney

ROBERT D. RIVERA
First Deputy Prosecuting Attorney

DEPARTMENT OF THE PROSECUTING ATTORNEY
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Supervisor, Appellate, Asset Forfeiture and Administrative Services Division

TESTIMONY

ON

HB 1791 - RELATING TO HOMICIDE

February 16, 2012

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 on Judiciary:

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

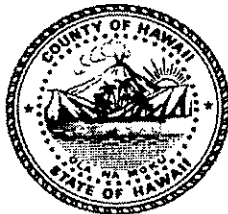
House Committee on Judiciary
Re: HB 1791
February 16, 2012
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of up to two (2) years as a condition of probation. Currently, the law is not clear about: (1) whether a sentence of probation is possible for a Manslaughter conviction; and (2) if probation 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. 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.

CHARLENE Y. IBOSHI
PROSECUTING ATTORNEY

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OFFICE OF THE PROSECUTING ATTORNEY

TESTIMONY IN SUPPORT OF HOUSE BILL 1791

A BILL FOR AN ACT RELATING TO HOMICIDE

COMMITTEE ON JUDICIARY

Rep. Gilbert S.C. Keith-Agaran, Chair

Rep. Karl Rhoads, Vice Chair

Thursday, February 16, 2012, 2:40 pm
State Capitol, Conference Room 325

Representatives Keith-Agaran, Rhoads and Members of the
Committees:

The Hawaii County Office of the Prosecuting Attorney supports House Bill 1791. This Bill updates the law relating to 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 up to ten years, and SHALL 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.

Basically this law adds ten years probation and a two year jail term for manslaughter. However we would request that the jail terms be MANDATORY in order to get probation. Currently defendants could get no jail term under the glitch in the law as interpreted by a specific court. Currently, the law is not clear about: whether a sentence of probation is possible for a Manslaughter conviction; and 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 bill will provide the necessary clarification.

For these reasons the Hawaii County Office of the Prosecuting Attorney supports HB 1791.

Thank you for the opportunity to testify on this matter.



BERNARD P. CARVALHO, JR.
Mayor

GARY K. HEU
Managing Director

POLICE DEPARTMENT COUNTY OF KAUAI

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DARRYL D. PERRY
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February 15, 2012

House of Representatives
The Twenty-Sixth Legislature
Regular Session of 2012
Committee on Judiciary
Rep. Gilbert S.C. Keith-Agaran, Chair
Rep. Karl Rhoads, Vice Chair

RE: House Bill 1791 (Relating to Homicide)

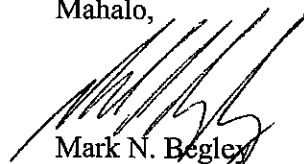
Honorable Chair Keith-Agaran and Vice Chair Rhoads:

The Kauai Police Department (KPD) offers this testimony today in strong support of House Bill 1791 (Relating to Homicide). This legislation amends the driver's license revocation provisions for those drivers convicted of manslaughter resulting from the operation of a vehicle or negligent homicide in the first or second degree.

KPD believes that this bill will appropriately strengthen the legal consequences for drivers convicted of these serious crimes.

Therefore, we humbly urge your honorable committee to pass House Bill 1791.

Mahalo,



Mark N. Begley
Acting Deputy Chief