

HB 1791



**STATE OF HAWAII  
DEPARTMENT OF TRANSPORTATION  
869 PUNCHBOWL STREET  
HONOLULU, HAWAII 96813-5097**

March 21, 2012

**HB 1791  
RELATING TO HOMICIDE**

**SENATE COMMITTEE ON TRANSPORTATION & INTERNATIONAL AFFAIRS**

The Department of Transportation supports House Bill No. 1791 as it amends the driver's license revocation provisions to allow license revocation for a period of time up to the maximum term of probation allowable when a driver is convicted of manslaughter resulting from the operation of a vehicle, or negligent homicide in the first or second degrees; allow for up to two years of imprisonment when a convicted defendant is sentenced to probation for manslaughter; and clarifies that probation is an applicable sentence for manslaughter. This would prevent those convicted and being released early, from driving and being at risk of committing the same crime again by driving. Presently, there is no license revocation for these crimes committed and it does not preclude these offenders from driving again after being released from incarceration to drive in a manner that would place others in danger.

The Department of Transportation urges your committee to pass House Bill No. 1791 to prevent those convicted of these crimes to continue to drive and put others at risk on our roadways.

Thank you for the opportunity to provide testimony.





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

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**ON THE FOLLOWING MEASURE:  
H.B. NO. 1791, RELATING TO HOMICIDE.**

**BEFORE THE:**

**SENATE COMMITTEE ON TRANSPORTATION AND INTERNATIONAL AFFAIRS**

**DATE:** Wednesday, March 21, 2012                      **TIME:** 1:15 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 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.

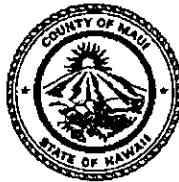
Section 706-624(2)(a), HRS, establishes what a court may impose as conditions of probation, but it does not provide for any term of imprisonment for manslaughter. It allows a court to sentence a defendant to a term of up to two years of imprisonment as a condition of probation for class A felony drug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

ALAN M. ARAKAWA  
Mayor



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TESTIMONY

ON

HB 1791 - RELATING TO HOMICIDE

March 21, 2012

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 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.