



Office of the Public Defender State of Hawaii



Testimony of the Office of the Public Defender, State of Hawaii to the House Committee on Transportation

February 9, 2018, 10:00 a.m.

H.B. No. 2210: RELATING TO MOTOR VEHICLE SAFETY

Chair Aquino and Members of the Committee:

This measure would reinstate the offense of “highly intoxicated driver,” and increase penalties for any driver with a measurable amount of alcohol above 0.15% blood alcohol content. The Office of the Public Defender opposes H.B. 2210.

The ignition interlock law as it currently stands, was many years in the making. Prior to the existence of the Impaired Driving Task Force, which submitted this bill, and prior to the existence of the Ignition Interlock Task Force, which is responsible for the legislation creating the ignition interlock law, there four to five individuals who spent countless hours creating the framework and drafting the original language of the ignition interlock law. The group consisted of myself, Lori Nishimura, then a deputy prosecuting attorney, Carol MacNamee, Bob Lung and Mark Miyahira, who was at the time a deputy prosecuting attorney on Maui. One of the first and most important concessions made by the MADD and law enforcement representatives was the repeal of the highly intoxicated driver portion of the OVUII law. The rationale for this agreement was that if all individuals convicted of OVUII were required to install ignition interlock to continue to drive, the level of his or her intoxication would be less relevant.

So now, to see a request from the Impaired Driving Task Force, which consists of virtually the same members from the Ignition Interlock Task Force to reinstate the offense of highly intoxicated driver, seem quite like a betrayal of the compromises and promises made during the creation of our current OVUII law. We ask that this committee defer this measure until the task force, or anyone can produce statistics of a measurable increase in alcohol related fatalities, and OVUII arrests. Back when we were composing the ignition interlock bill for consideration by this Legislature,

we were given statistics that more than 50% of people arrested for OVUII offenses had a BAC higher than .15%.

The Office of the Public Defender strongly opposes this measure. Thank you for the opportunity to be heard on this matter.

Justin F. Kollar
Prosecuting Attorney



Rebecca Vogt Like
Second Deputy

Jennifer S. Winn
First Deputy

Diana Gausepohl-White
Victim/Witness Program Director

OFFICE OF THE PROSECUTING ATTORNEY

County of Kaua'i, State of Hawai'i

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Victim/Witness Program 808-241-1898 or 800-668-5734

THE HONORABLE HENRY J.C. AQUINO, CHAIR
HOUSE COMMITTEE ON TRANSPORTATION
Twenty-Ninth State Legislature
Regular Session of 2018
State of Hawai'i

February 9, 2018

RE: H.B. 2210; RELATING TO MOTOR VEHICLE SAFETY

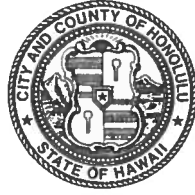
Chair Aquino, Vice Chair Quinlan, and members of the House Committee on Transportation, the Office of the Prosecuting Attorney of the County of Kauai submits the following testimony in strong support of H.B. 2210, with amendments as recommended by the Hawai'i Department of Transportation.

The purpose of this Bill is to add a definition for highly intoxicated driver; establish evidence and sentencing parameters for highly intoxicated drivers; and establish minimum and maximum administrative license revocation periods for highly intoxicated drivers.

This Bill actually restores the "high B.A.C." provisions that previously existed in Chapter 291 of the Hawai'i Revised Statutes. This Bill appropriately recognizes the dangers posed by highly intoxicated drivers to the safety of Hawai'i's citizens. The percentage of OVUII arrestees consisting of highly intoxicated drivers continues to increase from year to year. Moreover, there is ample justification in treating highly intoxicated drivers differently from a driver who is arrested with a lower B.A.C. Highly intoxicated drivers are more likely to be habitual drinkers who have developed a tolerance to alcohol that makes them feel that they are not too drunk to drive, even though they are nearly at twice the legal limit. It is appropriate to impose additional sanctions on these drivers. We also support the amendments suggested by the Hawai'i Department of Transportation; they are well-considered. For these reasons, our Office strongly supports the passage of H.B. 2210 with AMENDMENTS. Thank you for the opportunity to testify.

POLICE DEPARTMENT
CITY AND COUNTY OF HONOLULU

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KIRK CALDWELL
MAYOR

SUSAN BALLARD
CHIEF

JOHN D. McCARTHY
JONATHAN GREMS
DEPUTY CHIEFS

OUR REFERENCE **BM-GR**

February 9, 2018

The Honorable Henry J. C. Aquino, Chair
and Members
Committee on Transportation
House of Representatives
Hawaii State Capitol
415 South Beretania Street, Room 423
Honolulu, Hawaii 96813

Dear Chair Aquino and Members:

SUBJECT: House Bill No. 2210, Relating to Motor Vehicle Safety

I am Benjamin Moszkowicz, Acting Captain of the Traffic Division of the Honolulu Police Department (HPD), City and County of Honolulu.

The HPD supports the passage of House Bill No. 2210, Relating to Motor Vehicle Safety, with proposed changes.

According to a case control crash risk study published in 2015 by the National Highway Traffic Safety Administration (NHTSA), drivers with breath or blood alcohol levels above .15 (who would be classified as "highly intoxicated drivers" by this legislation) are over 12 times as likely to be involved in a motor vehicle collision than sober drivers. As breath or blood alcohol content (BAC) continues to climb above .15, crash risk continues to increase exponentially. Highly intoxicated drivers are a menace to the rest of the citizens of Hawaii and should be subject to much harsher penalties once convicted or adjudicated.

House Bill No. 2210, as currently written, would add a motor vehicle registration revocation period for first time "highly intoxicated drivers," as well as increase their period of driver license revocation. However, the bill lacks any language increasing penalties for repeat intoxicated drivers who are also "highly intoxicated drivers." In addition, drivers who refuse to be tested for alcohol concentration would not be subject to the "highly intoxicated driver" provisions. This would create an incentive to refuse testing for alcohol concentration, leading to a major hurdle in prosecuting these cases.

The Honorable Henry J. C. Aquino, Chair
 and Members
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Under the statutory scheme proposed by House Bill No. 2210, a “highly intoxicated driver” with a prior alcohol enforcement contact within five years would actually be subject to less penalties than one with no prior alcohol enforcement contacts.

The HPD urges you to consider passing House Bill No. 2210, Relating to Motor Vehicle Safety, with the proposed amendments to increase penalties for repeat offenders who are also “highly intoxicated drivers” as follows.


Number of prior contacts	Current Bill	Proposed Penalties
0 prior alcohol or drug enforcement contacts within 5 years	18 month license revocation, 6 to 12 month registration revocation	18 month license revocation, 6 to 12 month registration revocation for drivers who do not install ignition interlock
1 prior alcohol or drug enforcement contact within 5 years	No change from current statutes. (18 month license revocation)	24 month license revocation, 9 to 15 month registration revocation for drivers who do not install ignition interlock
2 prior alcohol or drug enforcement contacts within 7 years	No change from current statutes. (24 month license revocation)	36 month license revocation, 12 to 24 month registration revocation for drivers who do not install ignition interlock
3 or more prior alcohol or drug enforcement contacts within 10 years	No change from current statutes. (60 to 120 month license revocation)	90 to 120 month license revocation, 18 to 36 month registration revocation for drivers who do not install ignition interlock

Thank you for the opportunity to testify.

APPROVED:

Sincerely,


 Susan Ballard
 Chief of Police


 Benjamin Moszkowicz, Acting Captain
 Traffic Division

HB-2210

Submitted on: 2/7/2018 3:13:47 PM

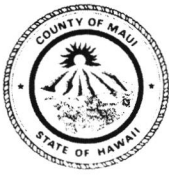
Testimony for TRN on 2/9/2018 10:00:00 AM

Submitted By	Organization	Testifier Position	Present at Hearing
Richard K. Minatoya	Maui Department of the Prosecuting Attorney	Support	No

Comments:

The Department of the Prosecuting Attorney, County of Maui, SUPPORTS HB 2210, Relating to Motor Vehicle Safety. This measure will provide much needed assistance in addressing the issue of operating a vehicle under the influence cases in which the driver is significantly above the current blood alcohol content limit. The Department requests that this measure be PASSED.

Thank you very much for the opportunity to provide this testimony.



ALAN M. ARAKAWA
MAYOR

OUR REFERENCE
YOUR REFERENCE

POLICE DEPARTMENT

COUNTY OF MAUI

55 MAHALANI STREET
WAILUKU, HAWAII 96793
(808) 244-6400
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February 7, 2018



TIVOLI S. FAAUMU
CHIEF OF POLICE

DEAN M. RICKARD
DEPUTY CHIEF OF POLICE

The Honorable Henry J.C. Aquino, Chair
And Members of the Committee on Transportation

House of Representatives
State Capitol
Honolulu, Hawaii 96813

Re: House Bill No. 2210, RELATING TO MOTOR VEHICLE SAFETY

Dear Chair Aquino and Members of the Committee on Transportation:

The Maui Police Department SUPPORTS the passage of H.B. No. 2210.

This bill adds a definition for a highly intoxicated driver, further establishes sentencing guidelines for the highly intoxicated driver, and provides for minimum and maximum administrative license revocation periods for the highly intoxicated driver.

Operating a motor vehicle under the influence of an intoxicant continues to be a problem in our state and across the nation. Between the years of 2012 – 2016, the impaired/intoxicated motor vehicle operator has been responsible for over one-third (1/3) of Hawaii's traffic fatalities. During this same period, law enforcement officers effected arrests on just under 34,000 motor vehicle operators for Operating a Vehicle Under the Influence of an Intoxicant (OVUII). Ninety-four percent (94%) of these arrests were for alcohol. Of these arrests, thirty-four percent (34%) had a Blood Alcohol Concentration (BAC) of .150 - .400 and eight percent (8%) had a BAC of .000 - .149. Sixty-nine percent (69%) of those arrested were first-time offenders, which means thirty-one percent (31%) were repeat offenders.

We understand the State of Hawaii Department of Transportation supports this bill with recommended amendments. We support their recommended amendments.

- Section 3, Page 6: Deletion of wording in lines 18 through 20, and amending to "...during the revocation period and installation during the revocation period of an ignition interlock device on any vehicle operated by..."
- Section 4, Page 12, Line 19: Increase the fine from \$150 to \$300.

The Honorable Henry J.C. Aquino, Chair
February 7, 2018
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The Maui Police Department asks that you SUPPORT the passage of H.B. No. 2210.

Thank you for the opportunity to testify.

Sincerely,

A handwritten signature in black ink, appearing to read "TIVOLI S. FAAUMU". The signature is stylized and written in all caps.

FOR TIVOLI S. FAAUMU
Chief of Police



Mothers Against Drunk Driving HAWAII
745 Fort Street, Suite 303
Honolulu, HI 96813
Phone (808) 532-6232
Fax (808) 532-6004
hi.state@madd.org

February 9, 2018

To: Representative Henry Aquino, Chair, House Committee on Transportation;
Rep. Sean Quinlan, Vice Chair; and members of the Committee

From: Carol McNamee and Arkie Koehl, Public Policy Committee - MADD Hawaii

Re: House Bill 2210 – Relating to Motor Vehicle Safety

I am Carol McNamee, offering testimony on behalf of the Hawaii Chapter of Mothers Against Drunk Driving regarding HB 2210, relating to Highway Safety.

MADD Hawaii supports the intent of this bill to increase the penalties for driving with a Blood alcohol concentration at or above .15 grams of alcohol per one hundred milliliters of blood. It is well documented that impairment begins with the first drink, is measurable at a BAC of .05, and, at a BAC of .08, is measurable with significant impairment of specific faculties important for driving. As the BAC continues to rise, the level of impairment also rises. Drivers with a BAC of .15 or higher have a significant chance of causing crashes resulting in harm to themselves and possibly innocent drivers on the road. Specific sanctions for this category of high risk driver have been included in Hawaii's impaired driving statutes in the past but were removed when Interlock went into effect in 2011.

MADD agrees with the principle of reinstating the high BAC concept into the statutes. However, in House Bill 2210, the penalties for driving with a BAC over .15 are higher than those for other high risk groups: repeat offenders and those who refuse to take the chemical test. Under these circumstances it is very likely that drivers who suspect that they have a high BAC will refuse to be tested. Hawaii's refusal rate has already climbed over the last two years (largely because of recent Supreme Court opinions). MADD would like to see the refusal rate decrease rather than increase even more. A person who refuses to be tested deprives the state of administering penalties that fit the crime and deprives himself or herself of the wake-up-call that might help them break through their denial that they have a problem with alcohol and/or other drugs.

The additional sanction of revocation of the vehicle registration for high BAC drivers creates and even greater difference in severity between the penalties of refusing to be tested versus driving with a BAC of .15 or more. Furthermore, in this bill there is no provision for removal of the license plate to allow law enforcement to be aware of vehicles being operated by drivers who have lost their vehicle registration due to being arrested for driving with a high BAC.

MADD proposes that the concept of House Bill 2210 not be lost but be discussed further and brought back to the Legislature at a later date.

Thank you for this opportunity to testify.

Committee on Transportation
Representative Henry J.C. Aquino, Chair
Representative Sean Quinlan, Vice Chair

Hearing Date: Friday, February 9th, 2018 10:00 am
Measure: **HB 2210**

Dear Chair Aquino, Vice Chair Quinlan, and members of the House Committee on Transportation,

My name is Kari Benes and I am the current chair of the Hawaii Strategic Highway Safety Plan (SHSP) asking for your **support of HB 2210**, which increases penalties for those caught driving under the influence of with a blood alcohol concentration (BAC) of .15 or greater. This type measure is one of the life saving priorities outlined by the Hawaii SHSP Core Committee.

According to Hawaii Department of Transportation, from 2007-2016 there were a total of **202** drivers involved in fatal crashes who had a blood alcohol concentration (BAC) of **.15 or greater**. Hawaii is one of only 4 states without enhanced penalties for drivers who are considered highly intoxicated.¹ Meanwhile, Hawaii ranks among the top 10 states for having largest proportion of drivers involved in a fatal crash who had a BAC of .15 or greater.²

Please support HB 2210 and SHSP's vision that all of Hawaii's road users arrive safely at their destinations.

To view the Hawaii Strategic Highway Safety Plan go to www.hawaiiishsp.com.

Thank you for your time.

Sincerely,

Kari Benes -Chair

Hawaii Strategic Highway Safety Plan

¹ <http://www.ncsl.org/research/transportation/increased-penalties-for-high-blood-alcohol-content.aspx>

² https://www.nhtsa.gov/sites/nhtsa.dot.gov/files/documents/12689-2015_tsf_alcohol-impaired_driving_120516_v3a_tag.pdf

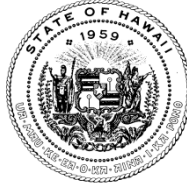
HB-2210

Submitted on: 2/7/2018 10:19:20 AM

Testimony for TRN on 2/9/2018 10:00:00 AM

Submitted By	Organization	Testifier Position	Present at Hearing
Victor K. Ramos	Maui Police Department	Support	No

Comments:



Testimony by:
JADE T. BUTAY
INTERIM DIRECTOR

Deputy Directors
ROY CATALANI
ROSS M. HIGASHI
EDWIN H. SNIFFEN
DARRELL T. YOUNG

IN REPLY REFER TO:

LATE

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

February 9, 2018
10:00 a.m.
State Capitol, Room 423

H.B. 2210
RELATING TO MOTOR VEHICLE SAFETY

House Committee on Transportation

The Department of Transportation (DOT) **supports with amendments** H.B. 2210 relating to motor vehicle safety. This bill adds a definition for a highly intoxicated driver. The bill further establishes evidence and sentencing parameters for the highly intoxicated driver and also minimum and maximum administrative license revocation periods for the highly intoxicated driver.

The drinking driver continues to be a problem in Hawaii and the nation. The impaired drinking driver has been responsible for an average of 33.5 percent of Hawaii's traffic fatalities during calendar years 2012 – 2016. During this period, law enforcement has arrested 33,953 drivers for operating a vehicle under the influence of an intoxicant (OVUII). Of those arrested, 31,952 were charged for OVUII (alcohol). Of those arrested and tested for alcohol, 13,629 or 33.9 percent had results between .150 - .400 blood alcohol content (BAC) and 3,302 or eight (8) percent had results between .000 - .149 BAC. Of those arrested and tested, 27,714 or 69 percent were determined to be first-time offenders according to the Administrative Driver License Revocation Office.

The DOT recommends the following two amendments:

- Section 3 on page 6, delete the following wording in lines 18 through 20, "... and a minimum of six months up to a maximum of one year revocation of the registration of any motor vehicle registered to ..." and replace it with the following wording "... during the revocation period and installation during the revocation period of an ignition interlock device on any vehicle operated by...".
- Section 4, on page 12, line 19: Increase the fine from \$150 to \$300.

These amendments will act as a deterrent to those violators who would be first-time offenders to understand the legal repercussions before drinking and driving.

The DOT urges your support to pass H.B. 2210 with the recommended amendments as it will deter drivers from drinking and driving thereby making the roads safer for Hawaii's residents and visitors.

Thank you for the opportunity to provide testimony.