

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

February 5, 2019

H.B. No. 951: RELATING TO MANSLAUGHTER

Chair Lee and Members of the Committee:

We strongly oppose H.B. No. 951 which would establish the offense of Manslaughter for distributing a dangerous drug where the recipient of the drug dies as a result of ingestion of the drug. As a general matter, we oppose criminal offenses which impose "strict liability" for performance of an act. Under the common law, every criminal offense contained a "mens rea" or culpable state of mind. This prevented the punishment of people for results of acts which were the result of mistake or good intentions.

Currently, the offense of Manslaughter punishes a person for recklessly causing a death. This standard is a long-standing standard in the law and is sufficient to punish causations of death which fall short of intentional acts. H.B. No. 951 would unjustifiably punish persons with a Manslaughter conviction under very questionable circumstances.

Addicts often ingest dangerous drugs in a group. They often share drugs. If any person in a group dies of an overdose from shared drugs, the others who shared their drugs would be sentenced to 20 years in prison for manslaughter under this measure. This is a severe punishment as a result of strict liability for what many policymakers call a public health rather than a criminal problem.

This measure would also apply also to healthcare professionals such a physicians and pharmacists. Opioid pain medications and some other prescription drugs are classified as "dangerous drugs" under H.R.S. Chapter 329. Distribution of these drugs to patients who then overdose on them would result in a criminal prosecution of these professionals under this strict liability law. The only exemption under this bill is for those falling under Chapter 327L, the "Our Care, Our Choice" Act which would not apply to the vast majority of medical treatments.

Finally, this measure would be difficult, if not impossible, to enforce. In every case under this prosecution, the causation of death would have to be shown to have been caused by the particular supply of drugs that the decedent is alleged to have received from the defendant. For example, it would not be enough to show that the decedent had crystal methamphetamine in his/her system and that the defendant sold crystal methamphetamine to the decedent. That would not be sufficient to prove beyond a reasonable doubt that the defendant's supply caused the decedent's death.

On the grounds that H.B. No. 951 would result in unjustified imprisonments, unintended prosecutions and other consequences, we respectfully oppose its passage. Thank you for the opportunity to provide testimony in this matter.



**TESTIMONY OF  
THE DEPARTMENT OF THE ATTORNEY GENERAL  
THIRTIETH LEGISLATURE, 2019**

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**ON THE FOLLOWING MEASURE:**

H.B. NO. 951, RELATING TO MANSLAUGHTER.

**BEFORE THE:**

HOUSE COMMITTEE ON JUDICIARY

**DATE:** Tuesday, February 5, 2019

**TIME:** 2:05 p.m.

**LOCATION:** State Capitol, Room 325

**TESTIFIER(S):** Clare E. Connors, Attorney General, or  
Adrian Dhakhwa, Deputy Attorney General

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Chair Lee and Members of the Committee:

The Department supports this bill.

The purpose of this bill is to allow prosecutions for the offense of manslaughter in cases where the distribution of dangerous drugs results in an overdose death.

Currently, an individual who distributes a lethal dose cannot be prosecuted for causing the overdose victim's death because the victim's act of ingesting the drugs caused the death, not the distribution.

This bill seeks to close this loophole by imposing strict liability for causing a death by providing the means to overdose. Drug distributors know the amount, frequency, and type of drugs their end users are ingesting such that an overdose death should be a foreseeable result of dangerous drug abuse. While this bill covers all dangerous drugs, some are of particular concern in this state, namely crystal methamphetamine and opioids.

The Hawaii Opioid Initiative ("HOI") has made tremendous progress in "developing and implementing a proactive coordinated statewide Action Plan in order to avoid the tragedies experienced in other parts of the nation."<sup>1</sup> Much of the Hawaii Opioid Initiative's attention and effort has been on education, prevention, and training, focusing primarily on the legal distribution of opioids (i.e., prescriptions). However, another means of combating the opioid epidemic is the ability to hold both legal and

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<sup>1</sup> The Opioid Initiative 2.0 A Statewide Response to Opioid Use and Other Substance Misuse p.1.

illegal drug distributors responsible when the drugs they distribute result in the end user dying of an overdose. In addition to prescription opioids, crystal methamphetamine is still prevalent in Hawaii. We are beginning to see it laced with the opioid fentanyl, which can be 50 times more powerful than heroin and 100 times more potent than morphine.<sup>2</sup> Under this bill, whether the end user knows the dangers does not affect the drug dealer's criminal culpability.

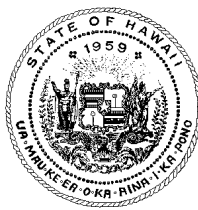
By design, physicians and other legal prescribers of dangerous drugs are not exempt from prosecution under this bill. It is the intent of this bill to allow for any dangerous drug distributor, illegal or not, to be *eligible* for prosecution if culpable. Being eligible for prosecution means that culpability must be evaluated. For example, this bill specifically exempts actions authorized under the "Our Care, Our Choice Act" (codified in chapter 327L, Hawaii Revised Statutes). Further, prosecutors would continue to exercise their discretion in deciding whether to charge a distributor with manslaughter, depending on the facts and circumstances of each case. There are approximately 21 other states with a similar law already in place.

We respectfully ask the Committee to pass this bill.

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<sup>2</sup> <https://www.cnn.com/2016/05/10/health/fentanyl-opioid-explainer/index.html> (last visited 1/31/19).

DAVID Y. IGE  
GOVERNOR



STATE OF HAWAII  
**DEPARTMENT OF PUBLIC SAFETY**  
919 Ala Moana Boulevard, 4th Floor  
Honolulu, Hawaii 96814

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Corrections

**Renee R. Sonobe Hong**  
Deputy Director  
Law Enforcement

No. \_\_\_\_\_

TESTIMONY ON HOUSE BILL 951  
RELATING TO MANSLAUGHTER.

By

Nolan P. Espinda, Director  
Department of Public Safety

House Committee on Judiciary  
Representative Chris Lee, Chair  
Representative Joy A. San Buenaventura, Vice Chair

Tuesday, February 5, 2019; 2:05 p.m.  
State Capitol, Conference Room 325

Chair Lee, Vice Chair San Buenaventura, and Members of the Committee:

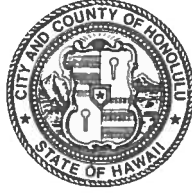
The Department of Public Safety (PSD) supports House Bill (HB) 951, which amends section 707-702(1), Hawaii Revised Statutes, to authorize manslaughter prosecutions for dangerous drug distribution that results in overdose deaths.

This bill furthers the goal of the Hawaii Opioid Initiative to reduce opioid related deaths. HB 951 is another tool to combat the opioid epidemic by holding people responsible for illegally distributing dangerous drugs, resulting in another person dying as a result of those drugs.

Thank you for the opportunity to testify on this measure.

POLICE DEPARTMENT  
CITY AND COUNTY OF HONOLULU

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OUR REFERENCE MK-KK

February 5, 2019

The Honorable Chris Lee, Chair  
and Members  
Committee on Judiciary  
House of Representatives  
Hawaii State Capitol  
415 South Beretania Street, Room 325  
Honolulu, Hawaii 96813

Dear Chair Lee and Members:

SUBJECT: House Bill No. 951, Relating to Manslaughter

I am Mikel Kunishima, Captain of the Criminal Investigation Division of the Honolulu Police Department (HPD), City and County of Honolulu.

The HPD supports House Bill No. 951, Relating to Manslaughter.

Incidents that result in death are the most serious cases that law enforcement investigates. Deaths caused by the opioid epidemic and other dangerous drugs are widespread across the nation, and its ripple effect is starting to reach Hawaii. Dangerous drugs are now easier to get, cheaper, and more potent. The HPD supports manslaughter prosecutions for dangerous drug distribution that results in overdose deaths.


The HPD urges you to support House Bill No. 951, Relating to Manslaughter.

Thank you for the opportunity to testify.

Sincerely,

  
Mikel Kunishima, Captain  
Criminal Investigation Division

APPROVED:

  
Susan Ballard  
Chief of Police

**HB-951**

Submitted on: 2/3/2019 12:46:32 PM

Testimony for JUD on 2/5/2019 2:05:00 PM

<b>Submitted By</b>	<b>Organization</b>	<b>Testifier Position</b>	<b>Present at Hearing</b>
Victor K. Ramos	Individual	Support	No

Comments: