



**WRITTEN TESTIMONY OF  
THE DEPARTMENT OF THE ATTORNEY GENERAL  
THIRTY-FIRST LEGISLATURE, 2021**

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**ON THE FOLLOWING MEASURE:**

H.B. NO. 334, RELATING TO OPERATING A VEHICLE UNDER THE INFLUENCE OF AN INTOXICANT.

**BEFORE THE:**

HOUSE COMMITTEE ON JUDICIARY AND HAWAIIAN AFFAIRS

**DATE:** Tuesday, March 2, 2021 **TIME:** 2:00 p.m.

**LOCATION:** State Capitol, Room 325, Via Videoconference

**TESTIFIER(S):** **WRITTEN TESTIMONY ONLY.**  
(For more information, contact David L. Williams,  
Deputy Attorney General, at 586-1160)

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Chair Nakashima and Members of the Committee:

The Department of the Attorney General (Department) supports this bill and submits the following comments.

The purposes of this bill are to establish a state drug and alcohol toxicology testing laboratory special fund and to utilize fines collected from those sentenced under the following offenses to be deposited into the fund: (1) operating a vehicle under the influence of an intoxicant offender as repeat offenders, (2) habitually operating a vehicle under the influence of an intoxicant, and (3) operating a vehicle after license and privilege have been suspended or revoked for operating a vehicle under the influence of an intoxicant.

However, section 706-643(2), Hawaii Revised Statutes, states: "All fines and other final payments received by a clerk or other officer of a court shall be accounted for, with the names of persons making payment, and the amount and date thereof, being recorded. All such funds shall be deposited with the director of finance to the credit of the general fund of the State. With respect to fines and bail forfeitures that are proceeds of the wildlife revolving fund under section 183D-10.5, and fines that are proceeds of the compliance resolution fund under sections 26-9(o) and 431:2-410, the director of finance shall transmit the fines and forfeitures to the respective funds."

To prevent a possible conflict with section 706-643(2), we recommend that the Committee consider amending section 706-643(2) as follows:

“All fines and other final payments received by a clerk or other officer of a court shall be accounted for, with the names of persons making payment, and the amount and date thereof, being recorded. All such funds shall be deposited with the director of finance to the credit of the general fund of the State. With respect to fines and bail forfeitures that are proceeds of the wildlife revolving fund under section 183D-10.5, fines that are proceeds of the state drug and alcohol toxicology testing laboratory special fund under sections 291E-61(b), 291E-61.5(c), and 291E-62(c), and fines that are proceeds of the compliance resolution fund under sections 26-9(o) and 431:2-410, the director of finance shall transmit the fines and forfeitures to the respective funds.”

The Department appreciates the opportunity to provide comments on this measure.

DAVID Y. IGE  
GOVERNOR



CRAIG K. HIRAI  
DIRECTOR

ROBERT YU  
DEPUTY DIRECTOR

EMPLOYEES' RETIREMENT SYSTEM  
HAWAII EMPLOYER-UNION HEALTH BENEFITS TRUST FUND  
OFFICE OF THE PUBLIC DEFENDER

**STATE OF HAWAII  
DEPARTMENT OF BUDGET AND FINANCE**

P.O. BOX 150  
HONOLULU, HAWAII 96810-0150

ADMINISTRATIVE AND RESEARCH OFFICE  
BUDGET, PROGRAM PLANNING AND  
MANAGEMENT DIVISION  
FINANCIAL ADMINISTRATION DIVISION  
OFFICE OF FEDERAL AWARDS MANAGEMENT (OFAM)

**WRITTEN ONLY**  
TESTIMONY BY CRAIG K. HIRAI  
DIRECTOR, DEPARTMENT OF BUDGET AND FINANCE  
TO THE HOUSE COMMITTEE ON JUDICIARY & HAWAIIAN AFFAIRS  
ON  
HOUSE BILL NO. 334

**March 2, 2021  
2:00 p.m.  
Via Videoconference**

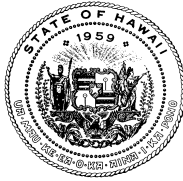
**RELATING TO OPERATING A VEHICLE UNDER THE INFLUENCE OF AN  
INTOXICANT**

The Department of Budget and Finance (B&F) offers comments on House Bill (H.B.) No. 334.

H.B. No. 334 establishes the State Drug and Alcohol Toxicology Testing Laboratory Special Fund (SDATTLSF) within the Department of Health to establish a State drug and alcohol toxicology testing laboratory (SDATTL) that is intended to support the prosecution of offenses related to operation of a motor vehicle while under the influence of an intoxicant; specifies that moneys in the State Highway Fund (SHF) may be expended for the cost of establishing a SDATTL; requires that fines imposed on offenders convicted of repeat or habitual offenses involving operating a vehicle under the influence of an intoxicant or on offenders convicted of operating a vehicle after a license and privilege have been suspended or revoked for operating a vehicle under the influence of an intoxicant be deposited into the SDATTLSF; appropriates funds out of the SHF to be deposited into the SDATTLSF; and appropriates funds from the SDATTLSF to establish a SDATTL.

As a matter of general policy, B&F does not support the creation of any special fund which does not meet the requirements of Section 37-52.3, HRS. Special funds should: 1) serve a need as demonstrated by the purpose, scope of work, and an explanation why the program cannot be implemented successfully under the general fund appropriation process; 2) reflect a clear nexus between the benefits sought and charges made upon the users or beneficiaries or a clear link between the program and the sources of revenue; 3) provide an appropriate means of financing for the program or activity; and 4) demonstrate the capacity to be financially self-sustaining. Regarding H.B. No. 334, it is difficult to determine whether the proposed special fund would be self-sustaining.

Thank you for your consideration of our comments.



STATE OF HAWAII  
DEPARTMENT OF HEALTH  
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Honolulu, HI 96801-3378  
doh.testimony@doh.hawaii.gov

WRITTEN  
TESTIMONY ONLY

**Testimony in SUPPORT of HB 334  
RELATING TO OPERATING A VEHICLE UNDER THE INFLUENCE OF AN  
INTOXICANT.**

REPRESENTATIVE MARK M. NAKASHIMA, CHAIR  
COMMITTEE ON JUDICIARY AND HAWAIIAN AFFAIRS

Hearing Date: 3/2/2021

Room Number: 325

1 **Fiscal Implications:** This measure may impact the priorities identified in the Governor's  
2 Executive Budget Request for the Department of Health's (Department) appropriations and  
3 personnel priorities.

4 **Department Testimony**

5 Driving under the influence (DUI) of drugs and alcohol continues to be a major safety issue in  
6 Hawaii. Prosecution of arrested suspected drivers impaired by drugs and/or alcohol is a costly  
7 time consuming process. Currently, blood and urine samples for drug analyses are sent to a  
8 mainland laboratory for analysis. This has several draw backs:

- 9
- 10 • Samples may not be analyzed in time for prosecution.
  - 11 • Laboratories will only analyze for a set battery of drugs. This does not include new  
12 designer drugs.
  - 13 • Prosecution costs include sample analysis as well as testimony by expert witnesses and  
14 laboratory personnel. Witness cost include travel and other expenses. Cost can run  
15 thousands of dollars per case.
  - 16 • A private laboratory can choose to discontinue this service at any time. This occurred  
17 recently for DUI blood alcohol testing.

18 This bill provides for a special fund to establish and sustain a State drug and alcohol testing  
19 laboratory. This bill will allow Department of Transportation (DOT) to transfer funds to the  
20 DOH for this laboratory. Funds will also be supplemented by National Highway Traffic Safety  
21 Administration federal funds.

1

2 This laboratory would address the drawbacks of using a private mainland laboratory.

- 3
- 4 • Samples will not have to be sent to the mainland for analyses. Samples would be  
5 delivered directly to the DOH laboratory thus reducing sample turnaround time.
  - 6 • DOH laboratory will analyze to detect a set battery of drugs. If there is a suspected drug  
7 not in the battery the laboratory will attempt to identify it. Identification and data on  
8 new impairing drugs will assist not only in law enforcement but also in drug abuse  
9 prevention.
  - 10 • Testing and prosecution witness costs will decrease. There will be no travel and witness  
11 costs. Laboratory personnel will be in State and attached to the DOH. This reduction in  
12 prosecution cost will enable the prosecutor to bring to trial more cases. Some cases have  
13 not been pursued due to cost.
  - 14 • A State laboratory will not suddenly discontinue services.

15 The DOH's Environmental Health Analytical Services Branch (EHASB) of which this new drug  
16 lab will be a part of is a well established regulatory analytical laboratory. The drug lab will be  
17 able to draw on the expertise of other chemists for everything from identification of new drugs to  
18 instrument troubleshooting. EHASB will acquire suitable accreditation to assure acceptance of  
19 results to forensic standards. Once established this State drug laboratory will help make the  
20 State roads and highways a safer place.

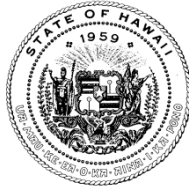
21

22 **Offered Amendments:** None.

23

24 Thank you for the opportunity to testify on this measure.

DAVID Y. IGE  
GOVERNOR



**TESTIMONY BY:**

JADE T. BUTAY  
DIRECTOR

Deputy Directors  
LYNN A.S. ARAKI-REGAN  
DEREK J. CHOW  
ROSS M. HIGASHI  
EDWIN H. SNIFFEN

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

March 2, 2021  
2:00 P.M.  
State Capitol, Teleconference

**H.B. 334**  
**RELATING TO OPERATING A VEHICLE UNDER THE INFLUENCE OF AN INTOXICANT**

House Committee on Judiciary & Hawaiian Affairs

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The Department of Transportation (DOT) **supports** H.B. 334 with amendments.

Highway safety in Hawaii is compromised by drunk and drugged drivers who continue to jeopardize the safety of all road users. The police continue their efforts to make our roads safer by arresting those individuals suspected of driving impaired. Bringing these cases to trial can be hampered by test results not being available for their respective hearings in time, as well as court costs being expensive.

Presently, testing of blood and urine samples for drugs in Operating a Vehicle Under the Influence of an Intoxicant (OVUII) cases is performed by a private laboratory in California, which is costly and takes time for shipping of specimen and testing. Occasions have occurred where the test results were not timely for trial, and thereby cases were dismissed.

Testing of blood for alcohol in OVUII cases is currently conducted by the City and County of Honolulu's Health Services Branch, which is overburdened with the responsibility of testing for all counties' police departments. In addition, impaired driving cases are potentially jeopardized if the City and County of Honolulu lab encounters issues such as inoperable instruments or shifting priorities.

Court cases involving drunk or drugged driving can become extremely costly when the prosecution subpoena experts and lab personnel to testify in court, especially if these witnesses are from private laboratories located out of state.

Other states find that costs for drunk and drugged driving cases are greatly reduced when their State-run laboratories perform the testing and confirmations, which will be used in court. Some of these State-run laboratories perform other testing functions, such as workplace drug testing; post mortem drug testing; the testing of inmates and parolees; etc. Such test functions can further reduce costs for the State.

DOT supports the establishment of a special fund to be used towards the establishment and maintenance of a State drug and alcohol toxicology testing laboratory. However, we understand that with the current state of our economy, it is not ideal for repeat and habitual offender fines to

be redirected to this special fund. Therefore, we request the removal of this language from the bill and offer up the attached, proposed H.D. 1.

Also, it is especially important that this bill be passed in order for DOT to transfer funds to the Department of Health (DOH), as well as provide DOH spending authority for those funds. As specified in the bill, the funds will be deposited into the special fund and used towards start-up costs for the laboratory, which will be supplemented with federal funds from the National Highway Traffic Safety Administration.

DOT is primarily concerned about improving highway safety and protecting the lives of our community members and visitors. Having a drug and alcohol toxicology testing laboratory within our State will provide law enforcement and adjudicators with the resources they need to protect our public from impaired drivers.

Thank you for the opportunity to provide testimony.



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## A BILL FOR AN ACT

RELATING TO OPERATING A VEHICLE UNDER THE INFLUENCE OF AN  
INTOXICANT.

**BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF HAWAII:**

1           SECTION 1. The legislature finds that highway safety in  
2   Hawaii is compromised by drunk and drugged drivers who continue  
3   to jeopardize the safety of all road users. The police continue  
4       their efforts to make our roads safer by arresting those  
5   individuals suspected of driving while impaired. Prosecuting  
6   these cases can be hampered by test results frequently not being  
7   available in time for the respective hearings, as well as by  
8                               expensive court costs.

9           The legislature notes that presently, testing of blood and  
10   urine samples obtained for the purpose of prosecuting cases  
11   involving the operation of a motor vehicle under the influence  
12   of an intoxicant is performed by private laboratories, with the  
13   exception of alcohol blood testing within the city and county of  
14   Honolulu. This drug and alcohol testing performed by private  
15                               laboratories is costly.

# H.B. NO.334

1           The legislature also finds that testing performed by out-  
2 of-state private laboratories takes time to complete. Instances  
3 have occurred in which test results were not timely provided for  
4 trial, and cases were dismissed as a result. Court cases  
5 involving drunk or drugged driving can become extremely costly  
6 when the prosecution subpoenas experts and lab personnel to  
7 testify, especially if these witnesses are from private  
8 laboratories located out-of-state.

9           The legislature recognizes that other states have found  
10 that costs for drunk and drugged driving cases are greatly  
11 reduced when state-run laboratories perform the testing and  
12 confirmations that will be used in court. Some of these state-  
13 run laboratories perform other testing functions such as  
14 workplace drug testing, post-mortem drug testing, and testing of  
15 inmates and parolees. These types of testing functions can  
16 further reduce costs for those states.

17           The legislature further finds that having an in-state drug  
18 and alcohol toxicology testing laboratory would be part of a  
19 multi-pronged approach to addressing impaired driving on our  
20 roadways. This dangerous and one hundred per cent preventable

# H.B. NO. 334

1 driving behavior can be further curbed with strict enforcement  
2 by our law enforcement officers, public education, and training.

3 The purpose of this Act is to:

4 (1) Establish the state drug and alcohol toxicology  
5 testing laboratory special fund to support the  
6 establishment, operation, management, and maintenance  
7 of an accredited state drug and alcohol toxicology  
8 testing laboratory;

9 (2) Specify that moneys in the state highway fund may be  
10 expended for the cost of establishing a state drug and  
11 alcohol toxicology testing laboratory; and

12 (3) Appropriate moneys, to be expended by the department  
13 Of health, for the establishment of a state drug and  
14 Alcohol toxicology testing laboratory.

15 SECTION 2. Chapter 291E, Hawaii Revised Statutes, is  
16 amended by adding a new section to part I to be appropriately  
17 designated and to read as follows:

18 **"§291E-\_\_\_\_\_ State drug and alcohol toxicology testing**  
19 **laboratory special fund; established.** (a) There is established

# H.B. NO. 334

1 in the state treasury a state drug and alcohol toxicology  
2 testing laboratory special fund, into which shall be deposited:

3       (1) Moneys appropriated by the legislature to the fund;

4       (2) Other grants and gifts made to the fund; and

5       (3) Any income and interest earned on the balance of the  
6 fund.

7       (b) Moneys in the state drug and alcohol toxicology testing  
8 laboratory special fund shall be administered and expended by the  
9 department of health to support a state drug and alcohol toxicology  
10 testing laboratory."

11       SECTION 3. Section 248-9, Hawaii Revised Statutes, is  
12 amended by amending subsection (a) to read as follows:

13       "(a) Moneys in the state highway fund may be expended for  
14                               the following purposes:

15       (1) To pay the costs of operation, maintenance, and repair  
16                               of the state highway system, including without  
17                               limitation, the cost of equipment and general  
18                               administrative overhead[+] and the cost of  
19 establishing a state drug and alcohol toxicology



1 SECTION 4. There is appropriated out of the state highway  
2 fund the sum of \$2,000,000 or so much thereof as may be  
3 necessary for fiscal year 2021-2022 for deposit into the state  
4 drug and alcohol toxicology testing laboratory special fund  
5 established by section 2 of this Act.

6 SECTION 5. There is appropriated out of the state drug and  
7 alcohol toxicology testing laboratory special fund the sum of  
8 \$2,000,000 or so much thereof as may be necessary for fiscal  
9 year 2021-2022 for the establishment of a state drug and alcohol  
10 toxicology testing laboratory, including the costs of laboratory  
11 instrumentation, facility renovation and security upgrades,  
12 office furniture and supplies, laboratory equipment, and other  
13 purposes that support a state drug and alcohol toxicology  
14 testing laboratory.

15 The sum appropriated shall be expended by the department of  
16 health for the purposes of this Act; provided that the funds  
17 appropriated shall not lapse at the end of the fiscal year for  
18 which it was appropriated, but any unencumbered funds remaining  
19 shall lapse on June 30, 2023, to the credit of the state highway  
20 fund.

21 SECTION 6. No later than thirty days prior to the

Page 1  
**H.B. NO. 334**

1 convening of each of the regular sessions of 2023 and 2024, the  
2 department of health shall submit a report on the expenditures  
3 made from the state drug and alcohol toxicology testing  
4 laboratory special fund, including the amounts expended and the  
5 purpose of each expenditure as it relates to supporting the  
6 state drug and alcohol toxicology testing laboratory.

7 SECTION 7. Statutory material to be repealed is bracketed  
8 and stricken. New statutory material is underscored.

9 SECTION 8. This Act shall take effect on July 1, 2021.

# H.B. NO. 334

**Report Title:**

OVUII; DOH; State Drug and Alcohol Toxicology Testing  
Laboratory; Special Fund; Appropriation

**Description:**

Establishes a state drug and alcohol toxicology testing laboratory special fund, to be administered by the department of health. Appropriates moneys. Requires expenditure reports to the legislature. (Proposed HD1)

*The summary description of legislation appearing on this page is for informational purposes only and is not legislation or evidence of legislative intent.*



**Justin F. Kollar**  
Prosecuting Attorney



**Rebecca Vogt Like**  
Second Deputy

**Jennifer S. Winn**  
First Deputy

**Diana Gausepohl-White**  
Victim/Witness Program Director

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**THE HONORABLE MARK M. NAKASHIMA, CHAIR  
HOUSE COMMITTEE ON JUDICIARY AND HAWAIIAN AFFAIRS  
THIRTY-FIRST LEGISLATURE**

Regular Session of 2021  
State of Hawai'i

March 1, 2021

**RE: HB 334 RELATING TO OPERATING A VEHICLE UNDER THE INFLUENCE OF  
AN INTOXICANT**

Chair Nakashima, Vice Chair Matayoshi, and Members of the House Committee on Judiciary and Hawaiian Affairs:

The Office of the Prosecuting Attorney, County of Kaua'i SUPPORTS HB 334, establishing a state drug and alcohol toxicology testing laboratory.

The bill establishes a special fund for the creation, operation, management, and maintenance of an accredited laboratory in the State of Hawaii. With this special fund and the creation of the associated laboratory, state and county law enforcement will be able to obtain toxicology evidence for suspected drunk drivers much faster and more efficiently.

This provision addresses a specific need for police and prosecutors in the State of Hawaii to have toxicology testing completed locally. The current practice of sending samples to laboratories in other states costs valuable time in investigations and results in considerable costs when witnesses must be flown to Hawaii to provide testimony. Hawaii is unique among the states in our geographic isolation and we must take measures accordingly to engage in self sustainable practices and to avoid dependence on the resources of other states for these important law enforcement functions.

Accordingly, the Office of the Prosecuting Attorney, County of Kaua'i, requests that this measure be PASSED.

Thank you very much for the opportunity to testify.

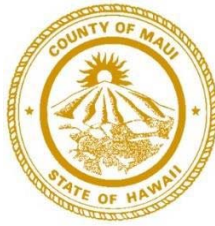
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**MICHAEL P. VICTORINO**  
Mayor

**ANDREW H. MARTIN**  
Prosecuting Attorney

**MICHAEL S. KAGAMI**  
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**ROBERT D. RIVERA**  
Second Deputy Prosecuting Attorney



**DEPARTMENT OF THE PROSECUTING ATTORNEY**  
COUNTY OF MAUI  
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TESTIMONY ON  
H.B. 334  
RELATING TO OPERATING A VEHICLE  
UNDER THE INFLUENCE OF AN INTOXICANT.

March 1, 2021

The Honorable Mark Nakashima, Chair  
The Honorable Scot Z. Matayoshi, Vice Chair  
and Members of the Committee on Judiciary and Hawaiian Affairs:

Chair Nakashima, Vice Chair Matayoshi, and Members of the Committee:

The Department of the Prosecuting Attorney, County of Maui strongly supports H.B. 334, Relating to Operating a Vehicle Under the Influence of an Intoxicant. This bill establishes a state drug and alcohol toxicology testing laboratory special fund, to be administered by the department of health.

A state toxicology lab is critically needed in Hawaii. Currently, alcohol testing for Operating a Vehicle Under the Influence of an Intoxicant (“OVUII”) criminal cases is performed by private laboratories in Hawaii, which can be costly and sometimes inefficient and backlogged due to the large numbers of OVUII samples that are sent from each County (these private laboratories perform many other testing functions such as workplace drug testing, etc.). In addition, these private labs do not have the capability to test for drugs in samples from impaired drivers – these samples must be sent to the Mainland for testing, and can be extremely cost when the prosecution is required to subpoena forensic toxicology experts and lab personnel to testify in Court.

A State drug and alcohol toxicology testing laboratory will provide law enforcement and prosecutors with the important resources they need to protect our public from impaired drivers and keep our roadways safe.

Thank you very much for the opportunity to provide testimony on this bill. Please feel free to contact our office at (808) 270-7777 if you have any questions or inquiries.

POLICE DEPARTMENT  
CITY AND COUNTY OF HONOLULU

801 SOUTH BERETANIA STREET · HONOLULU, HAWAII 96813  
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RICK BLANGIARDI  
MAYOR

SUSAN BALLARD  
CHIEF

JOHN D. MCCARTHY  
AARON TAKASAKI-YOUNG  
DEPUTY CHIEFS

OUR REFERENCE

CT-LC

March 2, 2021

The Honorable Mark M. Nakashima, Chair  
and Members  
Committee on Judiciary  
and Hawaiian Affairs  
House of Representatives  
Hawaii State Capitol  
415 South Beretania Street, Room 325  
Honolulu, Hawaii 96813

Dear Chair Nakashima and Members:

**SUBJECT: House Bill No. 334, Relating to Operating a Vehicle Under the Influence of an Intoxicant**

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

The HPD supports House Bill No. 334, Relating to Operating a Vehicle Under the Influence of an Intoxicant.

The private laboratories that currently provide blood and urine toxicology testing are quite costly, and it takes them some time to complete the testing. If the samples are not tested in a timely manner, it could negatively affect the investigation of the case and potentially lead to a dismissal of the charges. The benefits of having a state drug and alcohol toxicology laboratory will help to streamline and facilitate our efforts to address impaired drivers on our roadways.

The HPD strongly urges you to support House Bill No. 334, Relating to Operating a Vehicle Under the Influence of an Intoxicant.

The Honorable Mark M. Nakashima, Chair  
and Members  
March 2, 2021  
Page 2

Thank you for the opportunity to testify.

Sincerely,



Calvin Tong, Major  
Traffic Division

APPROVED:



Susan Ballard  
Chief of Police

DEPARTMENT OF THE PROSECUTING ATTORNEY  
**CITY AND COUNTY OF HONOLULU**

ALII PLACE  
1060 RICHARDS STREET • HONOLULU, HAWAII 96813  
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DWIGHT K. NADAMOTO  
ACTING PROSECUTING ATTORNEY

LYNN B.K. COSTALES  
ACTING FIRST DEPUTY  
PROSECUTING ATTORNEY



**THE HONORABLE MARK M. NAKASHIMA, CHAIR**  
**SENATE COMMITTEE ON JUDICIARY & HAWAIIAN AFFAIRS**  
**Thirty-first State Legislature**  
**Regular Session of 2021**  
**State of Hawai`i**

March 2, 2021

**RE: H.B. 334; RELATING TO OPERATING A VEHICLE UNDER THE INFLUENCE OF AN INTOXICANT.**

Chair Nakashima, Vice Chair Matayoshi, and members of the House Committee on Judiciary, the Department of the Prosecuting Attorney of the City and County of Honolulu ("Department") submits the following testimony in support of H.B. 334.

The Department believes that the State would greatly benefit from having a statewide drug and alcohol toxicology testing laboratory, as proposed in H.B. 334. For purposes of enforcing Hawaii's laws regarding operating a vehicle under the influence of an intoxicant ("OVUII"), having a certified, government-operated laboratory in-state would foreseeably lead to greater cost-efficiency for county police and prosecutors, more streamlined procedures within the laboratory itself—which means more streamlined testimony for trial purposes—and perhaps even increased public safety in the long-run.

Since Clinical Laboratories of Hawaii discontinued offering its drug and alcohol toxicology services in 2019, our county police and prosecutors have had to turn to mainland-based laboratories. This not only leads to increased costs—as numerous witnesses must be subpoenaed for any potential trial, given the system by which these laboratories operate—but has actually made it impossible to proceed to trial on certain OVUII offenses, due to the laboratories' internal travel restrictions pending the COVID-19 pandemic.

Thus, having a certified, government-run laboratory in Hawaii could avoid any future issues pertaining to interstate travel, discontinuation of a specific service, renegotiation of

purchasing contracts and so forth. Moreover, this would also minimize the relevant costs for county police and prosecutors, and aid in more effective enforcement of Hawaii's OVUII laws.

After several years of discussion and coordination between various State and county agencies, it is our understanding that H.B. 334 would enable the State Department of Transportation, Highway Safety Division ("DOT") to provide startup funding to the State Department of Health ("DOH"), for purposes of this joint endeavor. With that funding, DOH could then begin the year-long (or more) process of establishing and recruiting positions, purchasing equipment and software, developing standard operating procedures and testing methodology, and pursuing validation of their methodology. After that, we understand it would still take at least several more months to obtain the appropriate accreditation(s) and certification(s), before county police and prosecutors could begin utilizing the new "state lab" for actual cases.

Given the length of time needed for DOH to lay all of the groundwork for certification and accreditation of the proposed toxicology lab, and the challenges that the Department is currently facing—and will foreseeably face in the future—with the mainland-based laboratories, we believe it is very important for this project to get started as soon as possible.

For all of the foregoing reasons, the Department of the Prosecuting Attorney of the City and County of Honolulu supports the passage of H.B. 334. Thank you for the opportunity to testify on this matter.



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

March 2, 2021

To: Rep. Mark Nakashima, Chair, House Committee on Judiciary & Hawaiian Affairs; Rep. Scot Matayoshi, Vice Chair; and members of the Committee

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

Re: House Bill 334 – Relating to Operating a Vehicle under the Influence of an Intoxicant

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I am Arkie Koehl, offering testimony on behalf of the Hawaii Chapter of Mothers Against Drunk Driving in strong support of House Bill 334 – relating to the Use of Intoxicants While Operating a Vehicle.

Hawaii's annual fatality statistics reveal an increasing number of highway deaths connected to the presence of drugs. As early as 2017, that number actually exceeded alcohol-related fatalities. MADD therefore supports measures that give law enforcement the necessary tools to be able to arrest and convict impaired drivers – whatever their substance(s) of intoxication might be. Underground chemists are now able to synthesize new drugs at a rapid rate.

In order to reduce the tragic impaired driving crashes that plague our state, law enforcement must be able obtain the identification or confirmation of the suspected substance or substances that a driver may have consumed. For many years, blood samples have been sent to a mainland laboratory equipped to do the necessary toxicology testing. This has been a very expensive and lengthy method of obtaining needed information for OVUII trials. A funded drug lab in Hawaii is essential for giving law enforcement the necessary information needed to present to the Court and ultimately remove dangerous drivers from our roads.

House Bill 334 establishes the sources of the needed Laboratory funding including the fines that OVUII offenders pay now and possible additional sources. MADD believes a funded drug and alcohol toxicology lab is essential to reducing death and injury on Hawaii roads. Continuing to use mainland laboratories is an expensive and unworkable

answer. It seems appropriate to use fines from those convicted of impaired driving related crimes to support the drug and alcohol toxicology laboratory.

MADD strongly encourages this committee to pass HB 334, relating to the use of intoxicants while operating a vehicle.

Thank you for this opportunity to testify.





Subject: **Support** HB 334

Dear Chair Mark M. Nakashima, Vice Chair Scot Z. Matayoshi, and members of the House Committee on Judiciary and Hawaiian Affairs,

My name is Kari Benes, and I am the Chair of the Hawaii Strategic Highway Safety Plan (SHSP). The Strategic Highway Safety Plan Core Committee is committed to supporting system changes within the impaired driving statutes that enhance the ability to detect, deter, and mitigate the complexities around impaired driving. HB 334 provides a path to a sustainable in-state drug laboratory, which will enhance the state's capacity to accurately process, test, and validate scheduled substances found in drivers involved in impaired driving crashes through otherwise costly and laborious efforts.

HB 334 aligns with SHSP's life-saving priorities in the updated 2019-2024 plan.

The Hawaii Strategic Highway Safety Plan's vision is that all of Hawaii's road users arrive safely at their destinations. You can help us achieve our goal of reducing yearly fatalities, by supporting this measure.

To view the Strategic Highway Safety Plan, please visit <https://hidot.hawaii.gov/highways/shsp/>

Strategic Highway Safety Plan Mission

*Save lives and reduce injuries on Hawaii's roadways through strategic partnerships and implementation of the Strategic Highway Safety Plan.*

Letter of Support to the House Committee on Judiciary and Hawaiian Affairs

February 28, 2021

State House of Representatives

House Committee on Judiciary and Hawaiian Affairs, Rep. Nakashima (Chair), Rep. Matayoshi (Vice Chair)

Re: HB 334 Relating to Operating a Vehicle Under the Influence of an Intoxicant ( in Support)

To the Chair and Committee Members:

I was the board-certified forensic toxicologist that directed the private laboratory (at Clinical Laboratories of Hawaii) department that performed the DUI testing for the state from 1998 from the start of the DRE (Drug Recognition Evaluation) program to June 2020. We conducted the toxicology testing on all blood and urine specimens for alcohol and drugs with the lone exception of blood alcohol testing in Honolulu county, which was conducted by the City/County Honolulu Health Lab. Our experience and licensure derived from our successful workplace drug testing programs and our accreditation for testing blood alcohol under DOH Title 11 Chapters 113 and 114, respectively. We have also been involved in sexual assaults, postmortem, and homicide /injuries investigations for law enforcement agencies in the state. In this letter, I am writing in full support of HB 334 as it provides for the establishment of a state forensic toxicology lab.

Since my retirement in December of 2019, my old laboratory elected not to continue the forensic toxicology program for the DUI program, and stopped all blood alcohol testing in June 2020. As a consequence, all testing for drugs had been sent to a California laboratory (Central Valley Toxicology). All blood alcohol tests responsibility was assumed by the City/County Honolulu Lab, the only other state-licensed lab in the state for blood alcohol testing.

The bill presented to you today in consideration is one that will provide for the establishment of a DOH laboratory that can perform forensic toxicology testing for the state in support of the state DUI program. This program is currently at risk for a number of reasons:

1) All tests that are being sent out of state are **at risk** as evidentiary evidence since there is an artificial deadline of 21 days after collection for the results to be presented to the prosecutors. For alcohol, that deadline is 7 days. Any test results received beyond that time limit will not be admissible in DUI cases. The time incurred in shipping blood and urine specimens to the California lab are within that same time restriction. We have recently had a rising number of blood and urine drug tests being resulted from California that were received beyond the 21 day limit. No other state has such time restrictions on the toxicology results as some tests often come back within 1-3 months, depending on the complexity of the tests.

2) If toxicology tests are conducted in California, the necessity arises for the summons of all persons involved in the handling and testing for court testimony in Hawaii. Needless to say, there is a tremendous cost in bringing in, and housing these out-of-state witnesses (~\$5K and over per case) DUI offenses are designated as petty misdemeanors, hence the budget for prosecution is much lower than for felonies. In addition, the current COVID19 pandemic has increased the difficulty of interstate travel into Hawaii. As a consequence, our county prosecutors may be loathe to prosecute DUI where the testing was conducted out-of-state. Their annual budgets would be rapidly depleted in the prosecution

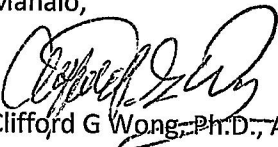
of petty misdemeanor drug DUI cases. Thus, prosecutors have had to resort to plea bargains with offenders, sometimes resulting in potential replacement of DUI charges with "reckless endangerment driving", and in the removal of the specific DUI charges in the defendants driving records. The major drug involved in drug DUI cases, in Hawaii and nation-wide, has been cannabis. With the advent of the medical cannabis program, along with the potential addition of even more cannabis DUI cases with legalization attempts, the state is in a dire situation as to its ability to prosecute future DUI cases without a more cost- and time-efficient means to obtaining scientific evidence in court.

**The benefits of establishing a state laboratory would be:**

- 1) More cost-efficient and time-efficient means for supporting the state DUI program, insuring that the laboratory evidence would be available to prosecutors in a timely fashion without exceeding their annual budgetary allowances in the prosecution of petty misdemeanor DUIs.
- 2) With more successful DUI prosecutions, the roads and the lives of our citizens will be better protected with fewer intoxicant-related collisions and fatalities.
- 3) The scope of the laboratory can also be potentially expanded in the near future to cover more state programs such as the coroner/medical examiner postmortem programs (all current testing is done out-of-state), criminal felony cases such as negligent injuries and homicides, sexual assaults, and even state workplace programs. The technology and scope of forensic toxicology testing would be identical in all cases.
- 4) Law Enforcement crime labs in Hawaii primarily deal with materials that are not derived from human organs, and have not been in support of expanding their scope of work to include human organs. A state forensic toxicology lab would be tasked to forensic toxicology testing specifically in human organs and tissues that currently law enforcement crime labs do not perform, nor are desiring to do so.

Thank you for your consideration of this bill. I hope that you will all see the benefits of the establishment of a state forensic toxicology lab and will approve accordingly.

Mahalo,

  
Clifford G Wong, Ph.D., ABFT-FT