

POLICE DEPARTMENT
CITY AND COUNTY OF HONOLULU

801 SOUTH BERETANIA STREET · HONOLULU HAWAII 96813
TELEPHONE (808) 529-3111 · INTERNET www.honolulu.org



RICK BLANGIARDI
MAYOR

SUSAN BALLARD
CHIEF

JOHN D. MCCARTHY
MARGO TAYLOR-BEAKLEY-YOUNG
DEPUTY CHIEFS

CUP REFERENCE

CT-LC

February 19, 2021

The Honorable Karl Rhoads, Chair
and Members
Committee on Judiciary
State Senate
Hawaii State Capitol
415 South Beretania Street
Honolulu, Hawaii 96813

Dear Chair Rhoads and Members:

SUBJECT: Senate Bill No. 412, 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 the proposal to exclude the charge of Habitually Operating a
Vehicle Under the Influence of an Intoxicant (HOVUII) from qualifying for a deferred
acceptance of a guilty plea or nolo contendere plea. Impaired driving is a serious
problem and is the leading cause of traffic fatalities, which impacts the lives of innocent
people. A person facing a charge of HOVUII clearly has not changed their irresponsible
behavior and should be subject to the normal provisions set forth for prosecution.

The HPD urges you to support Senate Bill No. 412, Relating to Operating a
Vehicle Under the Influence of an Intoxicant.

Thank you for the opportunity to testify.

APPROVED:

Handwritten signature of Susan Ballard in black ink.

Susan Ballard
Chief of Police

Sincerely,

Handwritten signature of Calvin Tong in black ink.

Calvin Tong, Major
Traffic Division

DEPARTMENT OF THE PROSECUTING ATTORNEY
CITY AND COUNTY OF HONOLULU

ALII PLACE
1060 RICHARDS STREET • HONOLULU, HAWAII 96813
PHONE: (808) 768-7400 • FAX: (808) 768-7515

LATE

STEVEN S. ALM
PROSECUTING ATTORNEY



THOMAS J. BRADY
FIRST DEPUTY
PROSECUTING ATTORNEY

THE HONORABLE KARL RHOADS, CHAIR
SENATE COMMITTEE ON JUDICIARY
Thirty-First State Legislature
Regular Session of 2021
State of Hawai`i

February 19, 2021

RE: S.B. 412; RELATING TO OPERATING A VEHICLE UNDER THE INFLUENCE OF AN INTOXICANT.

Chair Rhoads, Vice Chair Keohokalole, and members of the Senate Committee on Judiciary, the Department of the Prosecuting Attorney of the City and County of Honolulu ("Department") submits the following testimony in strong support of S.B. 412. This bill is part of the Department's 2021 legislative package, and we thank you for hearing it.

The purpose of S.B. 412, is to prohibit deferred pleas for the offense of Habitually Operating a Vehicle Under the Influence of Alcohol (HRS §291E-61.5) ("Habitual OVUII"), by adding this offense to the list of deferral-precluded offenses. Habitual OVUII offenders are those who have already been convicted of OVUII (HRS 291E-61) on two separate occasions, within the 10 years prior, and are now facing a third charge of OVUII.

Generally speaking, deferred pleas allow someone to "put off" entering an official plea for a specific length of time—commonly known as the deferral period—during which time they have to meet certain terms and conditions set by the court (e.g. remain arrest-free and conviction-free, etc); the length of the deferral period varies, based on the severity of the offense. If the defendant abides by all terms and conditions of their deferral, through the end of their deferral period, then the case will be dismissed and no conviction will ever appear on the person's record (for that particular offense). This is essentially an opportunity for someone to show the court that they have "learned their lesson"—even without a formal conviction—and will not reoffend; each person is typically allowed only one deferred plea in their lifetime. Depending on the individual, a deferral could be used to keep a person's criminal record totally clean, or it could be used to keep a felony off of their record, or for other reasons.

Section 853-4, Hawaii Revised Statutes ("HRS"), explains the process and parameters of getting a deferral, and also lists specific offenses for which deferral is not allowed (e.g. abuse of

family or household member, solicitation of prostitution, all class A felonies, etc). If enacted, S.B. 412 would add Habitual OVUII to that list, thus prohibiting deferral of these offenses.

Those who repeatedly continue to drive under the influence—especially after they have already been convicted of OVUII in the past—clearly present a grave risk to public safety and welfare, and strong measures must be taken to address this type of behavior. By statute, even first-time OVUII offenders are not permitted to defer their pleas, so it simply does not make sense that a third-time offender would be permitted to do so. While we understand it is unlikely that a court would grant deferral to a Habitual OVUII offender, the fact that it is still possible seems incongruous with the seriousness of the offense.

For these reasons, the Department of the Prosecuting Attorney strongly supports the passage of S.B. 412. Thank you for this opportunity to testify.



POLICE DEPARTMENT
COUNTY OF MAUI



MICHAEL P. VICTORINO
MAYOR

55 MAHALANI STREET
WAILUKU, HAWAII 96793
(808) 244-6400
FAX (808) 244-6411

TIVOLI S. FAAUMU
CHIEF OF POLICE

OUR REFERENCE
YOUR REFERENCE

DEAN M. RICKARD
DEPUTY CHIEF OF POLICE

February 16, 2021

Senator Karl Rhoads, Chair
Senator Jarrett Keohokalole, Vice Chair
Committee on Judiciary
Thirty-First Legislature 2021
Hawaii State Capitol
415 South Beretania Street
Honolulu, HI 96813

RE: SENATE BILL 412 RELATING TO OPERATING A VEHICLE UNDER THE INFLUENCE OF AN INTOXICANT

Dear Chair Rhoads and Committee Members:


The Maui Police Department SUPPORTS the passage of SB412, which will exclude habitually operating a vehicle under the influence of an intoxicant from qualifying for a deferred acceptance of guilty plea or no contest plea.

An offender who has been charged with habitually operating a vehicle while under the influence of an intoxicant would have already had two prior convictions and an opportunity to change their behavior. Deferrals are for those who are unlikely to re-offend, which would not apply to these offenders.

Impaired driving puts everyone else's lives at risk. The repeated nature of the offense of habitual impaired driving does not meet the criteria for a deferral plea and should be excluded. This act will help to close potential loopholes in the law for these offenders.

Accordingly, the Maui Police Department request SB 412 be PASSED. Thank you for the opportunity to testify.

Sincerely,


TIVOLI S. FAAUMU
Chief of Police

MICHAEL P. VICTORINO
M ayor

ANDREW H. MARTIN
A cting Prosecuting Attorney

MICHAEL S. KAGAMI
F irst Deputy Prosecuting Attorney

ROBERT D. RIVERA
S econd Deputy Prosecuting Attorney



LATE

DEPARTMENT OF THE PROSECUTING ATTORNEY
COUNTY OF MAUI
150 SOUTH HIGH STREET
WAILUKU, MAUI, HAWAI'I 96793
PHONE (808) 270-7777 • FAX (808) 270-7625

TESTIMONY
ON
S.B. 412 RELATING TO
OPERATING A VEHICLE UNDER
THE INFLUENCE OF AN INTOXICANT

February 18, 2021

The Honorable Karl Rhoads
Chair
The Honorable Jarrett Keohokalole
Vice Chair
and Members of the Committee on Judiciary

Chair Rhoads, Vice Chair Keohokalole, and Members of the Committee:

The Department of the Prosecuting Attorney, County of Maui respectfully submits the following comments concerning S.B. 412, Relating to Operating a Vehicle Under The Influence of an Intoxicant. Specifically, we would like to express our support for S.B. 412.

H.R.S. § 853-4 should explicitly exclude Habitually Operating A Vehicle Under The Influence of an Intoxicant (H.R.S. § 291E-61.5) from qualifying for deferred acceptance of a guilty or no contest plea. Offenders who are charged with Habitual OUI have at least two prior convictions for Operating a Vehicle Under the Influence of an Intoxicant. An offender who operates a vehicle on our roadways while impaired puts innocent lives at risk. Those who suffer first and second-time convictions are given the opportunity to rehabilitate themselves in a manner that, in part, educates them on the dangers of driving while impaired. The Habitual OUI offender's conscious disregard of such dangers, specifically their willingness to continue to put other people's lives at risk, is intolerable. Under such circumstances, the ends of justice and the welfare of society demands that such offenders suffer the penalty imposed by law.

For these reasons, the Department of the Prosecuting Attorney, County of Maui supports the passage of S.B. 412. Please feel free to contact our office at (808) 270-7777 if you have any questions or inquiries.

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