



**TESTIMONY OF
THE DEPARTMENT OF THE ATTORNEY GENERAL
KA 'OIHANA O KA LOIO KUHINA
THIRTY-SECOND LEGISLATURE, 2024**

ON THE FOLLOWING MEASURE:

H.B. NO. 2346, RELATING TO MANSLAUGHTER.

BEFORE THE:

HOUSE COMMITTEE ON JUDICIARY AND HAWAIIAN AFFAIRS

DATE: Wednesday, February 14, 2024 **TIME:** 2:00 p.m.

LOCATION: State Capitol, Room 325 and Videoconference

TESTIFIER(S): Anne E. Lopez, Attorney General, or
Adrian Dhakhwa, Deputy Attorney General

Chair Tarnas and Members of the Committee:

The Department of the Attorney General (Department) supports this bill.

The purpose of this bill is to amend section 707-702, Hawaii Revised Statutes (HRS), to allow prosecutions for the offense of manslaughter in cases where the distribution of a dangerous drug results in the end user's overdose death. Currently, an individual who illegally distributes a dangerous drug that causes a fatal overdose to the end user cannot be prosecuted for the user's death, since the end user's own voluntary conduct of ingesting or using the drugs caused the user's own death. This bill closes this loophole by explicitly stating that the overdose victim's actions cannot be held against the victim as a defense to the manslaughter charge.

Recklessly causing another person's death via knowingly and unlawfully distributing a dangerous drug that causes a fatal overdose would be a class A felony offense, punishable by up to 20 years in prison, with the possibility of probation pursuant to section 706-620, HRS. Individuals who shared the drugs with the overdose victim and sought medical assistance for the victim would still be afforded the protections under sections 329-43.6 and 329E-2, HRS, which provide immunity from criminal prosecution when medical assistance is in good faith sought for the victim.

Although 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 the dangerous drug abuse, this bill will still require the prosecution to prove beyond a

reasonable doubt that the dealer acted recklessly in causing the end user's death; that is, the dealer consciously disregarded a substantial and unjustifiable risk that the drug the dealer distributed would cause a fatal overdose. While this bill covers all dangerous drugs, some are of particular concern in this state, namely crystal methamphetamine and opioids (including fentanyl).

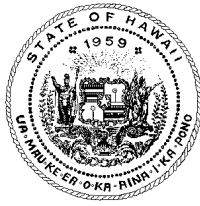
The Hawaii Opioid Initiative ("HOI") has made tremendous progress in "developing and implementing a proactive coordinated statewide Action Plan in order to avoid the tragedies experienced in other parts of the nation."¹ Much of the Hawaii Opioid Initiative's attention and effort has been on education, 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 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. The State is beginning to see crystal methamphetamine laced with fentanyl, which can be 50 times more powerful than heroin and 100 times more potent than morphine.² The Department believes this bill will assist in holding illegal drug dealers legally accountable for their actions.

The Department respectfully requests the passage of this bill.

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

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

JOSH GREEN, M.D.
GOVERNOR
KE KIA'ĀINA



STATE OF HAWAII | KA MOKU'ĀINA 'O HAWAII
**DEPARTMENT OF CORRECTIONS
AND REHABILITATION**
*Ka 'Oihana Ho'omalu Kalaima
a Ho'oponopono Ola*
1177 Alakea Street
Honolulu, Hawaii 96813

TOMMY JOHNSON
DIRECTOR

Melanie Martin
Deputy Director
Administration

Pamela Sturz
Deputy Director
Correctional Institutions

Sanna Muñoz
Deputy Director
Rehabilitation Services
and
Programs

No. _____

WRITTEN TESTIMONY ONLY

TESTIMONY ON HOUSE BILL 2346 RELATING TO MANSLAUGHTER by

Tommy Johnson, Director
Department of Corrections and Rehabilitation

House Committee on Judiciary & Hawaiian Affairs
Representative David A. Tarnas, Chair
Representative Gregg Takayama, Vice Chair

Wednesday, February 14, 2024; 2:00 p.m.
State Capitol, Conference Room 325 & via Videoconference

Chair Tarnas, Vice Chair Takayama, and Members of the Committee:

The Department of Corrections and Rehabilitation (DCR) supports House Bill (HB) 2346, which proposes to amend the offenses of manslaughter to include cases where a person knowingly and unlawfully distributes a dangerous drug in any amount and thereby recklessly causes the death of another person who ingested that drug. Illegal drugs pose a considerable risk of harm to others, and in correctional settings, illegal drugs pose a clear and present danger to those sentenced to our custody and care, and our dedicated staff. Persons who distribute a dangerous drug in any amount and thereby recklessly cause the death of another person who ingested that drug must be held accountable.

Thank you for the opportunity to provide written testimony in support of HB 2346.

STATE OF HAWAI‘I
OFFICE OF THE PUBLIC DEFENDER

**Testimony of the Office of the Public Defender,
State of Hawai‘I, to the House Committee on
Judiciary and Hawaiian Affairs**

February 14, 2024

H.B.2346: RELATING TO MANSLAUGHTER

Chair: David A. Tarnas, Vice Chair: Gregg Takayama and Members of the Committee:

The Office of the Public Defender respectfully opposes H.B. 2346. This bill proposes to make it manslaughter, for any person to knowingly and unlawfully distribute a dangerous drug, in any amount, and thereby recklessly cause the death of another person as a result of that person’s ingestion of that drug. The OPD recognizes the problem within our community regarding overdosing deaths with such substances as fentanyl, but feels that this bill would not help in solving this problem.

First, this bill hopes to achieve some level of deterrence by making a distributor of a dangerous drug which results in death, liable for a class A felony. This is the same logic which was used only a few years ago, during the “war” on methamphetamine, which resulted only in mass incarceration. There are already strict laws in place to punish those that distribute dangerous drugs in the community, and there is no need for more.

Second, this bill removes any responsibility from the user of the dangerous drug even when their own actions may have contributed to their death. Thus, a person who unlawfully distributes a dangerous drug, in any amount, is strictly liable regardless of the intervening cause of how the substance is consumed, and in what amount. This is a causational slippery slope, that must be scrutinized. Regardless of the legal or illegal distribution of a product, the responsible use of said product has always been contemplated by the law. Otherwise, we would not be able to have pharmaceuticals, firearms or automobiles sold within the community, because if misused all can cause death. Our laws have always contemplated how any product is used, regardless of the dangerous nature of said product. Furthermore, would we then seek to make any dangerous activity that could cause death illegal? (sky diving, bungee jumping, boxing, MMA fighting, football, baseball and automobile racing)

The OPD understands that there is a difference between legal products sold in the marketplace and illegal dangerous drugs. However, said difference does not alleviate the legal conundrum regarding causation created by this bill. The legal definition of the state of mind of recklessness (HRS: 702-206 (3)(c)) has at its core, the following: “A person acts recklessly with respect to the result of his conduct when he consciously disregards a substantial and unjustifiable risk that his conduct will cause such a result”. Thus, a defendant charged with a crime for which recklessness is relevant, must be aware of a risk and disregard said risk. Relevant to this bill, the result of a defendant’s conduct is the death of another person. How then, can a defendant consciously disregard a substantial and unjustifiable risk of death, when the product, regardless of its illegality, might be misused or purposefully used to cause self-harm. The intervening actions of a user of a product cannot always be contemplated, and thus cannot always be within a defendant’s conscious awareness.

The OPD understands that the unlawful distribution of dangerous drugs has and continues to be a problem within our society, but tougher laws and stricter liability will not solve this problem. Understanding why there is a need for members of our society to anesthetize themselves with substances, understanding how to heal that pain, and helping to alleviate the causes of that pain will do a lot more than incarcerating someone for 20 years.

For these reasons, the Office of the Public Defender respectfully opposed this bill.

Thank you for the opportunity to comment on this measure.

Mitchell D. Roth
Mayor



Benjamin T. Moszkowicz
Police Chief

Reed K. Mahuna
Deputy Police Chief

County of Hawai'i

POLICE DEPARTMENT

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February 13, 2024

Representative David A. Tarnas
Chairperson and Committee Members
House Committee on Judiciary and Hawaiian Affairs
Hawai'i State Capitol, Room 325
415 South Beretania Street
Honolulu, Hawai'i 96813

Dear Chairperson Tarnas and Committee Members:

RE: HOUSE BILL (HB) 2346, RELATING TO MANSLAUGHTER
HEARING DATE: FEBRUARY 14, 2024
TIME: 2:00 PM

The Hawaii Police Department **strongly supports** HB 2346, for the following reasons.

The proliferation of deaths caused unnecessarily by the use of illegal narcotics is alarming. While investigating deaths due to narcotic overdoses, law enforcement investigators do their best to identify who is responsible for providing the narcotics to the decedent; however, in the absence of a statute such as HB 2346, investigators are often left to rely on statutes that do not truly capture the magnitude of the crime.

This bill provides law enforcement investigators with a much-needed statutory tool by directly addressing those responsible for someone's death through the distribution of illegal narcotics and holding those distributors criminally accountable for their actions.

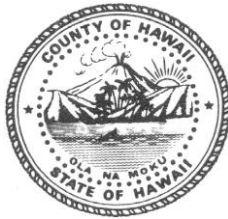
It is for these reasons, we urge this committee to **approve** this legislation. Thank you for allowing the Hawai'i Police Department to provide comments relating to House Bill 2346.

Sincerely,


BENJAMIN T. MOSZKOWICZ
POLICE CHIEF

KELDEN B.A. WALTJEN
PROSECUTING ATTORNEY

STEPHEN L. FRYE
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OFFICE OF THE PROSECUTING ATTORNEY
TESTIMONY IN SUPPORT OF HOUSE BILL 2346

A BILL FOR AN ACT
RELATING TO MANSLAUGHTER

COMMITTEE ON JUDICIARY & HAWAIIAN AFFAIRS
Representative David A. Tarnas, Chair
Representative Gregg Takayama, Vice Chair

Wednesday, February 14, 2023 at 2:00 p.m.
Via Videoconference
State Capitol Conference Room 312
415 South Beretania Street

Honorable Chair Tarnas, Vice-Chair Takayama and Members of the Committee on Judiciary and Hawaiian Affairs. The County of Hawai'i, Office of the Prosecuting Attorney submits the following testimony in support of House Bill No. 2346.

House Bill No. 2346 represents an important step towards addressing the accountability of illegal narcotics distributors in cases where their actions result in fatalities. This bill acknowledges the need for legal measures to hold individuals accountable for the consequences of their actions in distributing illegal narcotics.

We are encountering an increase in the number of overdose fatalities across our state. Implementing such legislation could potentially deter illegal narcotics distribution by creating a legal framework for prosecuting those responsible for deaths linked to their activities. Additionally, it may provide a form of justice for the victims and their families while also potentially preventing future tragedies.

Although this provision will undoubtedly provide law enforcement with a necessary tool to address illegal narcotics distribution and save lives. One suggestion to further discourage drug distribution would be to carve out a provision and exception that if convicted of this prescribed conduct an offender would not be eligible for probation by amending Hawaii Revised Statutes Section 706-659.

The County of Hawai'i, Office of the Prosecuting Attorney remains committed to pursuing justice with integrity and commitment. House Bill No. 2346 reflects a commitment to addressing the serious public health and safety concerns associated with illegal narcotics distribution, particularly when it results in loss of life.

For the foregoing reasons, the County of Hawai'i, Office of the Prosecuting Attorney supports the passage of House Bill No. 2346. Thank you for the opportunity to testify on this matter.

POLICE DEPARTMENT
KA 'OIHANA MĀKA'I O HONOLULU
CITY AND COUNTY OF HONOLULU

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ARTHUR J. LOGAN
CHIEF
KAHU MĀKA'I

KEITH K. HORIKAWA
RADE K. VANIC
DEPUTY CHIEFS
HOPE LUNA NUI MĀKA'I

OUR REFERENCE AP-BT

February 14, 2024

The Honorable David A. Tarnas, Chair
and Members
Committee on Judiciary and
Hawaiian Affairs
House of Representatives
415 South Beretania Street, Room 325
Honolulu, Hawai'i 96813

Dear Chair Tarnas and Members:

SUBJECT: House Bill No. 2346, Relating to Manslaughter

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


The HPD supports House Bill No. 2346, Relating to Manslaughter.

This bill will strengthen the manslaughter law and prosecution of illegal drug dealers who causes the death of a user. As indicated in the bill's justification, Hawai'i, especially the City and County of Honolulu, has seen a significant rise in overdose deaths from fentanyl and other illegal drugs, which are sold by these dealers. The HPD strongly urges the passage of this bill.

The HPD urges you to support House Bill No. 2346, Relating to Manslaughter. Thank you for the opportunity to testify.

APPROVED:

Sincerely,

for 

Arthur J. Logan
Chief of Police


Andre Peters, Captain
Criminal Investigation Division

HB-2346

Submitted on: 2/14/2024 1:12:49 AM

Testimony for JHA on 2/14/2024 2:00:00 PM

Submitted By	Organization	Testifier Position	Testify
Nikos Leverenz	Drug Policy Forum of Hawaii	Oppose	In Person

Comments:

Aloha Chair Tarnas, Vice Chair Takyama, & Committee Members:

Drug Policy Forum of Hawaii is opposed to this measure as it is readily foreseeable that those persons with substance use disorder will be further criminalized, particularly those who are of limited or no economic means.

The 20-year penalty for offering a substance to another that causes death will deter overdose prevention on the ground and expeditiously result in more deaths.

The proposed language doesn't require that there be money, goods, or services exchanged for the illicit substance provided that results in death. In addition to targeting the putative low-level dealer who may be engaging in sales to support their own substance use or substance use disorder, this language extends to those who may have procured drugs on the illicit market to share with other users.

The consequences of this statutory language will be grave from the outset. The possible imposition of a 20-year prison term for an accidental overdose that may prove to be fatal will undermine this state's Good Samaritan law and deter people from calling 911.

Additionally, this bill runs contrary to the health-focused approach this state has taken to overdose response and will augur a return to the "bad old days" when people experiencing overdose were dropped off on a hospital sidewalk or simply left alone to die.

The policy forwarded in this bill deeply embodies the wayward sadism of a punitive approach to health issues under the decades-long war waged by the criminal legal system against those from under-resourced communities.

Please defer this bill and instead encourage further movement toward policies that center health, dignity, justice, compassion, and human rights. This may include a broad expansion of drug checking through the rescission of this state's paraphernalia law, as well as prospective use of reagents by people who use drugs and spectrometers by social services providers. Overdose prevention sites are another proven mechanism to save lives.

The iron law of prohibition, where increased supply-side interdiction efforts result in more potent and cheaper drugs of uncertain composition, can be countered by more public health responses, including demand-side reduction through increased behavioral health treatment.

Unfortunately, this nation still publicly entertains the hubristic grandiose delusion of being "drug free" as it is the most medicated society in human history.

The result?

One million overdose deaths since the turn of the century.

We can do better. This bill makes it worse.

Mahalo for the opportunity to provide testimony.

HB-2346

Submitted on: 2/14/2024 10:24:26 AM

Testimony for JHA on 2/14/2024 2:00:00 PM

Submitted By	Organization	Testifier Position	Testify
Nikos Leverenz	Hawaii Health & Harm Reduction Center	Oppose	Written Testimony Only

Comments:

Hawai'i Health & Harm Reduction Center is ***strongly opposed*** to this most recent incarnation of a bill to authorize a drug induced homicide law in our state. It would operate to undermine the significant progress that we've made in recent years through [The Hawai'i Opioid Initiative](#).

[The Center for Health Law and Policy addresses the impact of what is proposed here very candidly:](#)

"There is no systematic empirical evidence that DIH prosecutions slow the sale of illegal drugs. On the contrary, they may well be counterproductive. Running at cross-purposes to 9-1-1 Good Samaritan laws, DIH prosecutions discourage witnesses to overdoses from calling 9-1-1 for fear that they will be arrested and charged with DIH or other serious crimes. For those who are incarcerated and have an opioid use disorder, there is an exponentially increased likelihood of death from overdose during the first weeks after release. Investment in these prosecutions and incarceration also divert resources from treatment, harm reduction, and social support services."

A [primer from Fair & Just Prosecution](#) is also worth consideration, including the following succinct critique:

"Drug-induced homicide prosecutions raise a number of serious concerns, including that they do not alleviate the risk of fatal overdoses; are ineffective as a deterrent to drug use, drug sales, and overdose deaths; can be legally problematic and consume significant resources; often target friends and family members; and worsen racial disparities in the system."

Please defer this measure.