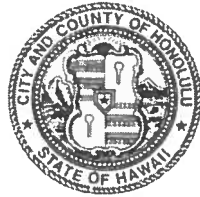


POLICE DEPARTMENT  
CITY AND COUNTY OF HONOLULU

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



RICK BLANGIARDI  
MAYOR

RADE K. VANIC  
INTERIM CHIEF

OUR REFERENCE JS-LC

February 18, 2022

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. 2163, Relating to Negligent Homicide

I am James Slayter, Acting Major of the Traffic Division of the Honolulu Police Department (HPD), City and County of Honolulu.

The HPD supports Senate Bill No. 2163, Relating to Negligent Homicide.

The HPD supports the proposal of stricter penalties for persons convicted of Negligent Homicide in the First Degree when the operator has one or more convictions for the offense of Operating a Vehicle Under the Influence of an Intoxicant within 20 years of the instant offense, a suspended and revoked license and privilege to operate a vehicle due to driving while under the influence of an intoxicant, or the person is a highly intoxicated driver.

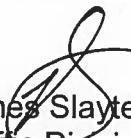
Stricter penalties could help deter would-be offenders from driving impaired. Any measure that could prevent these tragedies and keep impaired drivers off of our roadways should be considered.

The Honorable Karl Rhoads, Chair  
and Members  
February 18, 2022  
Page 2


The HPD urges you to support Senate Bill No. 2163, Relating to Negligent Homicide.

Thank you for the opportunity to testify.

Sincerely,

  
James Slayter, Acting Major  
Traffic Division

APPROVED:

  
Rade K. Vanic  
Interim Chief of Police

JAN 20 2022

---

# A BILL FOR AN ACT

RELATING TO NEGLIGENT HOMICIDE.

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

1           SECTION 1. The legislature finds that impairment by drugs  
2 and alcohol is a factor in many traffic fatalities in Hawaii.  
3 **Those killed in drunk driving crashes are given a life sentence.**  
4 A federal study reviewing data over a three year period found  
5 drivers convicted of driving under the influence of alcohol are  
6 at least 1.8 times more likely to be in fatal crashes and at  
7 least four times as likely to be in fatal crashes involving high  
8 blood or breath alcohol levels compared to drivers without prior  
9 convictions. According to the national Highway Traffic Safety  
10 Administration, motor vehicle crashes that involve an alcohol-  
11 impaired driver kill twenty-eight people in the United States  
12 every day, amounting to one death every fifty-three minutes.  
13 The Centers for Disease Control and Prevention estimates the  
14 annual cost of alcohol-related crashes to be greater than forty-  
15 four billion dollars. **The legislature finds that existing**  
16 **penalties need to be addressed to deter drivers from repeatedly**  
17 **operating their vehicles under the influence of drugs and**



1 alcohol and at increased blood or breath alcohol levels to help  
2 prevent more traffic fatalities and save lives.

3 The purpose of this Act is to elevate the penalty of  
4 negligent homicide in the first degree from a class B felony to  
5 a class A felony when certain conditions are met.

6 SECTION 2. Section 707-702.5, Hawaii Revised Statutes, is  
7 amended to read as follows:

8 "§707-702.5 Negligent homicide in the first degree. (1)

9 A person commits the offense of negligent homicide in the first  
10 degree if that person causes the death of:

11 (a) Another person by the operation of a vehicle in a  
12 negligent manner while under the influence of drugs or  
13 alcohol; or

14 (b) A vulnerable user by the operation of a vehicle in a  
15 negligent manner.

16 (2) ~~[Negligent homicide in the first degree is a class B~~  
17 ~~felony.]~~ A person who violates subsection (1)(b) is guilty of a  
18 class B felony.

19 (3) A person who violates subsection (1)(a) is guilty of a  
20 class B felony; provided that the person is guilty of a class A  
21 felony when the person:





# S.B. NO. 2163

**Report Title:**

Negligent Homicide; Class A Felony

**Description:**

Makes it a class A felony for a person to cause the death of another while operating a vehicle in a negligent manner and under the influence of an intoxicant if the person has one or more convictions for operating a vehicle under the influence of an intoxicant within twenty years of the instant offense, a suspended and revoked license and privilege to operate a vehicle due to driving while under the influence of an intoxicant, or the person is a highly intoxicated driver.

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

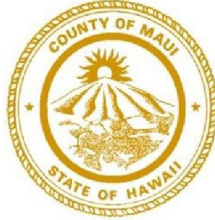


**LATE**

**MICHAEL P. VICTORINO**  
Mayor

**ANDREW H. MARTIN**  
Prosecuting Attorney

**MICHAEL S. KAGAMI**  
First Deputy Prosecuting Attorney



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

TESTIMONY  
ON  
S.B. 2163 RELATING TO  
NEGLIGENT HOMICIDE

February 18, 2022

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. 2163, Relating to Negligent Homicide. Specifically, we would like to express our strong support for increasing the penalty for Negligent Homicide in the First Degree to a class A felony if certain conditions related to intoxicated driving are met.

In our view, the increased penalty created by this bill would save lives throughout the State. It does this by discouraging negligent driving behavior for three categories of DUI offenders: Those who have one or more DUI convictions within the past twenty years, those who choose to drive while their license is suspended or revoked for a DUI or DUI-related offense, and those who choose to drive while highly intoxicated. In short, it sends a strong message that the families of those killed by intoxicated drivers have already learned: intoxicated driving has consequences that last well beyond the actual DUI offense.

We do have the following suggestions to clarify some of the provisions within the bill. First, we suggest that the proposed language in subsection 707-702.5(3)(b) be amended to reflect that the intent is to prohibit driving while one's license is suspended or revoked for DUI. Second, we suggest that the proposed language in subsection 707-702.5(3)(a) be made consistent with the existing language in 291E-61 relating to prior convictions. These amendments would have the following result:

[...]

(3) A person who violates subsection (1)(a) is guilty of a class B felony; provided that the person is guilty of a class A felony when the person:

(a) Has been convicted one or more times for the offense of operating a vehicle under the influence within twenty years of the instant offense;

(b) Is, at the time of the instant offense, engaging in conduct that would constitute a violation of section 291E-62; or

(c) Is a highly intoxicated driver as defined by section 291E-1.

**(4) For the purposes of this section, a person “has been convicted one or more times for the offense of operating a vehicle under the influence” if the person has one or more:**

**(a) convictions under section 291E-61, section 291E-4(a), section 291E- 61.5 or section 291E-64;**

**(b) convictions in any other state or federal jurisdiction for an offense that is comparable to operating or being in physical control of a vehicle while having either an unlawful alcohol concentration or an unlawful drug content in the blood or urine or while under the influence of an intoxicant or habitually operating a vehicle under the influence of an intoxicant; or**

**(c) adjudications of a minor for a law violation that, if committed by an adult, would constitute a violation of section 291E-61, section 291E-4(a), or section 291E-61.5.”**

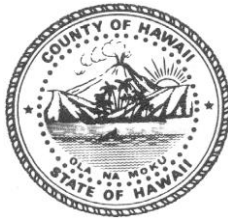
For these reasons, the Department of the Prosecuting Attorney, County of Maui strongly supports the passage of S.B. 2163. Please feel free to contact our office at (808) 270-7777 if you have any questions or inquiries.

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



**KELDEN B.A. WALTJEN**  
PROSECUTING ATTORNEY

**STEPHEN L. FRYE**  
FIRST DEPUTY  
PROSECUTING ATTORNEY



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## **OFFICE OF THE PROSECUTING ATTORNEY**

### **TESTIMONY IN SUPPORT OF SENATE BILL 2163**

A BILL FOR AN ACT  
RELATING TO NEGLIGENT HOMICIDE

COMMITTEE ON JUDICIARY  
Senator Karl Rhoads, Chair  
Senator Jarrett Keohokalole, Vice Chair

Friday, February 18, 2022 at 9:30 a.m.  
Via Videoconference

Honorable Chair Rhoads, Vice-Chair Keohokalole and Members of the Committee on Judiciary. The County of Hawai'i, Office of the Prosecuting Attorney submits the following testimony in support of Senate Bill 2163

Highway safety in Hawaii is compromised by drunk and drugged drivers who continue to jeopardize the safety of all road users. Currently, Negligent Homicide in the First Degree carries a maximum possible punishment of ten years of imprisonment. S.B. 2163 proposes to elevate the maximum possible punishment to twenty years in cases where a defendant has a history of drunk driving or was highly intoxicated.

The aggravating factors set forth in S.B. 2163 of a prior drunk driving conviction, driving on a license that was suspended for drunk driving, and driving while highly intoxicated are factors that demonstrate the defendant was acting with disregard to the safety and lives of others on the road. These factors justify the possibility of a longer term of imprisonment.

Presently, a prosecutor could elect to charge a defendant with Manslaughter under §702-702, a class A felony that carries a twenty-year maximum term of imprisonment. However, for manslaughter, the State must prove a defendant acted recklessly as opposed to the lower threshold of negligence required to prove an offense under §702-702.5, Negligent Homicide in the First Degree.

The Hawaii Supreme Court has previously held that the State is allowed to use prior DUI convictions as evidence at trial against a defendant charged with Manslaughter to establish the defendant's mental state at the time of the offense. See State v. St. Clair, 101 Haw. 280, 288, 67 P.3d 779, 787 (2003), as corrected (May 5, 2003) (Stating, [t]he evidence that St. Clair had been involved in an automobile accident while driving intoxicated less than four years prior to the instant accident was relevant to prove that, when St. Clair decided to drive on February 23, 2002, after consuming at least a dozen beers, he consciously disregarded a substantial and unjustifiable risk that his conduct would cause the death of another.)

SB 2163 serves to strengthen Hawaii's laws against drunk drivers who have no excuse to put others in harm's way. By creating a set of aggravating factors within the charge of §702-702.5, Negligent Homicide in the First Degree, Defendant's will be exposed to a proper level of punishment for inexcusable actions that resulted in devastating consequences.

The County of Hawai'i, Office of the Prosecuting Attorney remains committed to the pursuit of justice with integrity and commitment. For the foregoing reasons, the, County of Hawai'i, Office of the Prosecuting Attorney Supports the passage of Senate Bill No. 2114. Thank you for the opportunity to testify on this matter.

**LATE**

**SB-2163**

Submitted on: 2/17/2022 11:05:10 AM

Testimony for JDC on 2/18/2022 9:30:00 AM

<b>Submitted By</b>	<b>Organization</b>	<b>Testifier Position</b>	<b>Remote Testimony Requested</b>
William Hankins	Testifying for Maui Police Department	Support	No

Comments:

This bill is needed to further hold those who choose to drive impaired responsible for taking innocent lives. Driving impaired is a choice and the consequences for the victims families are forever. Do the right thing for all the victims families out there screaming for help. Please pass this bill and send a strong message that Hawaii is no longer going to accept this behavior and if you kill someone you will be held to the highest level of accountability.

**Mitchell D. Roth**  
Mayor



**Paul K. Ferreira**  
Police Chief

**Kenneth Bugado Jr.**  
Deputy Police Chief

## County of Hawai'i

### POLICE DEPARTMENT

349 Kapi'olani Street • Hilo, Hawai'i 96720-3998  
(808) 935-3311 • Fax (808) 961-2389

**LATE**

February 17, 2022

Senator Karl Rhoads  
Chairperson and Committee Members  
Committee on Judiciary  
415 South Beretania Street  
Honolulu, Hawai'i 96813

RE: SENATE BILL 2163, RELATING TO NEGLIGENT HOMICIDE  
HEARING DATE: February 18, 2022  
TIME: 09:30 A.M.

Dear Senator Rhoads:

The Hawai'i Police Department **supports** Senate Bill SB2163, with its purpose to increase the penalties for drivers who cause the death of another person or persons while under the influence of an intoxicating substance.

Drivers who operate a vehicle with a suspended or revoked license show a pattern of poor decision making, leading to hazardous behavior. Providing a twenty year look back into an individual's driving record allows agencies to determine if a driver has already been convicted for operating a vehicle under the influence of an intoxicant. This information will help show a pattern of disregarding the orders of the court, which are intended to protect the community.

Any driver who operates a vehicle as a "highly intoxicated driver" poses a serious danger to anyone on or near a roadway. In Hawai'i the majority of fatal crashes involve drivers impaired by intoxicating substances. In 2021, Hawai'i County had 26 people who were killed in fatal crashes, 21 of them involved an impaired driver, which equates to one person being killed every 17 days. Many of the most tragic crashes involve drivers who were highly intoxicated at that time.

Drivers who have violated any part of section 2 (a, b, or c) knowingly endangered themselves and others. These drivers must not be permitted to continue their dangerous actions and held accountable for them. 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 Senate Bill SB2163.

Sincerely,

PAUL K. FERREIRA  
POLICE CHIEF



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 18, 2022

To: Senator Karl Rhoads, Chair  
Senator Jarrett Keohokalole, Vice Chair  
Senate Committee on Judiciary, and members of the Committee

From: Kurt Kendro, Chair, Public Policy Committee; Mothers Against Drunk Driving  
(MADD) Hawaii

Re: SENATE BILL 2163- RELATING TO NEGLIGENT HOMICIDE

I am Kurt Kendro, Chair of MADD Hawaii's Public Policy Committee and retired Major from the Honolulu Police Department speaking on behalf of the members of MADD Hawaii Advisory Board in STRONG SUPPORT of Senate Bill 2163.

For far too long, Hawaii has treated impaired drivers who kill people on our roadways far too lenient. Even those offenders who have prior convictions for operating a vehicle under the influence of an intoxicant (OVUII) involved in a fatal crash are treated with leniency. With convicted offenders 1.8 more likely to be involved in a fatal crash and four times more likely to have a high blood or breath alcohol content is completely unacceptable.

Senate Bill 2163 does several things, First, it increases penalties for a person convicted of Negligent Homicide in the First Degree to a Class B felony. Second, it increases punishment to a Class A felony when the offender has been previously convicted for an OVUII in the previous 20 years, while operating a vehicle with a license suspended or revoked for OVUII or is a highly intoxicated driver.

These increased punishments are long overdue and just part of the effort to provide a strong deterrence to drive while impaired and finally, appropriately punishes those offenders involved in fatal crashes.

MADD Hawaii STRONGLY SUPPORTS Senate Bill 2163 and ask that this bill be passed.

Thank you for the opportunity to testify.

**SB-2163**

Submitted on: 2/12/2022 3:14:16 AM

Testimony for JDC on 2/18/2022 9:30:00 AM

<b>Submitted By</b>	<b>Organization</b>	<b>Testifier Position</b>	<b>Remote Testimony Requested</b>
tristin manuel	Individual	Support	No

Comments:

Aloha,

My name is Tristin from Kailua and native Hawaiian. I support this bill, since my baby cousin died in Waianae. His name was Kaulana Werner, 18 year old football star. He and his parents NEED JUSTICE! the laws allowed the driver to basically get away with it.

Yes , please pass this bill!

Mahalo

**SB-2163**

Submitted on: 2/14/2022 11:49:18 AM

Testimony for JDC on 2/18/2022 9:30:00 AM

<b>Submitted By</b>	<b>Organization</b>	<b>Testifier Position</b>	<b>Remote Testimony Requested</b>
Dara Carlin, M.A.	Individual	Support	No

Comments:

Stand in Support.

**Erik K. Abe**  
**55 South Kukui Street, #1606**  
**Honolulu, Hawaii. 96813**  
**Ph. (808) 537-3081. Cell: (808) 537-3081**

**TESTIMONY TO THE SENATE COMMITTEE ON JUDICIARY**  
**FRIDAY, FEBRUARY 18, 2022; 9:30 A.M.**  
**VIA VIDEOCONFERENCE**

**RE: SENATE BILL NO. 2162, RELATING TO NEGLIGENT HOMICIDE.**

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

My name is Erik Abe, and I am the Public Affairs and Policy Director for the Hawaii Primary Care Association (HPCA). I am testifying today solely in my capacity as a concerned citizen, and my views expressed do not necessarily nor officially reflect those of the HPCA.

I am testifying in **SUPPORT OF THE INTENT** of Senate Bill No. 2162, RELATING TO NEGLIGENT HOMICIDE., but raise serious concerns.

As received by your Committee, this bill would clarify the penalties for persons convicted of Negligent Homicide in the First Degree to make it a class A felony if a person causes the death of another person by the operation of a vehicle in a negligent manner while under the influence of drugs or alcohol, provided that either:

- (1) The person was previously convicted of operating a vehicle under the influence within the past twenty years of the incident;
- (2) The person was operating a vehicle after his or her license and privilege was suspended or revoked for operating a vehicle under the influence of an intoxicant;  
or
- (3) The person was a highly intoxicated driver.

Four years ago, I was requested by a friend, Mr. Ron Shimabuku, to assist his family draft legislation before the Hawaii State Legislature to strengthen Hawaii's laws applicable to driving under the influence of an intoxicant. At that time, Mr. Shimabuku informed me that his hanai brother, Kaulana Werner, was killed by an intoxicated driver in Nanakuli, Island of Oahu, and that his family wanted to change the laws to prevent similar situations from occurring in the future to ease the suffering of families of victims.



Shortly after the accident, the Prosecutor informed the Werner Ohana that they would charge the driver with Negligent Homicide. The penalty for Manslaughter is a class A felony (20 years to life). The penalty for Negligent Homicide in the First Degree is a class B felony (no more than 10 years).

The Werner Ohana felt that a 10-year sentence was insufficient for the crime that was committed, especially in light of the fact that Kaulana was thrown more than 200 feet from the impact due to the driver's high rate of speed, and that the driver failed to stop at the scene of the accident and was apprehended nearly a mile away while in the process of having her car towed by a friend.

Despite these objections, the driver was charged with Negligent Homicide, and on November 1, 2019, Myisha Lee Armitage was convicted of Accidents Involving Death or Serious Bodily Injury, in violation of Section 291C-12, HRS, and Negligent Homicide in the First Degree, in violation of Sections 707-702.5(1)(a) and 707-702.5(1)(b), HRS. On appeal, the Intermediate Court of Appeals vacated this conviction and remanded the case back to the Circuit Court of the First Circuit for a new trial.

The Intermediate Court of Appeals held that based on the Hawaii Supreme Court's ruling in *State v. Niceloti-Velazquez*, 139 Hawaii 203, 386 P.3d 487 (2016), the police in the *Armitage* case (*State of Hawaii v. Myisha Lee Armitage*, (CASE NO. 1CPC-17-0000342)), failed to adequately develop the record to demonstrate the existence of exigent circumstances that would have justified the arresting officer's requesting a warrantless blood draw from the defendant.

At the time of Kaulana's accident, both the Honolulu Police Department and the City Prosecutor's Office followed both the statutory and common law applicable to the collection of evidence in accidents involving death or serious injury in Hawaii, despite the fact that the common law in the United States was evolving around that time.

The plight of the Werner Ohana also brings to light ambiguity between the crimes of Manslaughter, Section 707-702, HRS, and Negligent Homicide in the First Degree, Section 707-702.5, HRS. Both are applicable where a person's negligence or reckless behavior leads to the death of another. However, Negligent Homicide in the First Degree specifically applies to cases involving the reckless operation of a vehicle under the influence of an intoxicant that leads to the death of another.

**Testimony on Senate Bill No. 2163**  
**Friday, February 18, 2022; 9:30 a.m.**  
**Page 3**

It should be noted that in rendering the *Armitage* decision, the Intermediate Court of Appeals applied a drastic change in enforcement policy on a crime that was committed BEFORE that change in policy had taken effect. Subsequently, the *Armitage* ruling puts into question all previous convictions that relied on a warrantless blood draw based on the categorical "exigent circumstance" exception.

Despite this, the bill before you seeks to clarify the law to address the most egregious cases involving deaths that result from driving under the influence. However, as presently written, this bill would not change anything for a situation like that experienced by the Werner Ohana. In Kaulana's incident, the driver was never previously convicted of driving under the influence, nor was she operating a vehicle after her license and privilege was suspended or revoked. And while she was highly intoxicated, because of conflicts between statutory and common law, the police and prosecutor failed to obtain the necessary warrant to test the driver's blood.

And while these developments were brought to the Chair's attention before Opening Day of the 2022 Regular Session, Senate Bill No. 2163 is the only vehicle from the Senate currently pending action.

The Werner Ohana is deeply disappointed by these developments but hope that this measure can be amended during the legislative process to address some of our concerns. Ultimately, it is the desire of the Werner Ohana to prevent others from ever having to experience the pain and anguish that they have had to live through.

Thank you for the opportunity to testify. Should you have any questions, please do not hesitate to contact me.

**Cynthia Au**  
**1073 Kinau St**  
**Honolulu, Hawaii 96814**

TESTIMONY TO THE SENATE COMMITTEE ON JUDICIARY  
FRIDAY, FEBRUARY 18, 2022; 9:30 A.M.  
VIA VIDEOCONFERENCE

RE: SENATE BILL NO. 2163, RELATING TO NEGLIGENT HOMICIDE.

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

My name is Cynthia Au, and I am testifying as a concerned citizen in **SUPPORT OF THE INTENT** of Senate Bill No. 2163, RELATING TO NEGLIGENT HOMICIDE., but raise serious concerns.

This bill would clarify the penalties for persons convicted of Negligent Homicide in the First Degree to make it a class A felony if a person causes the death of another person by the operation of a vehicle in a negligent manner while under the influence of drugs or alcohol, provided that either:

- (1) The person was previously convicted of operating a vehicle under the influence within the past twenty years of the incident;
- (2) The person was operating a vehicle after his or her license and privilege was suspended or revoked for operating a vehicle under the influence of an intoxicant; or
- (3) The person was a highly intoxicated driver.

The issue with the bill is that if an intoxicated person operates a vehicle under the influence and kills someone but a warrant was not obtained because of unclear statutory and common law, this bill will not give justice to the innocent victims and their families.

Many lives have been lost because people were drinking and operating a vehicle irresponsibly. Do not let families who lost loved ones continue to suffer injustices.

**LATE**

**SB-2163**

Submitted on: 2/17/2022 4:30:17 PM

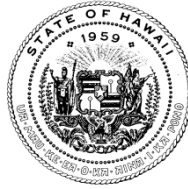
Testimony for JDC on 2/18/2022 9:30:00 AM

<b>Submitted By</b>	<b>Organization</b>	<b>Testifier Position</b>	<b>Remote Testimony Requested</b>
Bronsten Kossow	Individual	Support	No

Comments:

Please support. Mahalo!

DAVID Y. IGE  
GOVERNOR



**LATE**

TESTIMONY BY:

JADE T. BUTAY  
DIRECTOR

Deputy Directors  
ROSS M. HIGASHI  
EDUARDO P. MANGLALLAN  
PATRICK H. MCCAIN  
EDWIN H. SNIFFEN

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

February 18, 2022  
9:30 A.M.  
State Capitol, Teleconference

**S.B. 2163  
RELATING TO NEGLIGENT HOMICIDE**

Senate Committee on Judiciary

---

The Department of Transportation (DOT) **supports the intent** of S.B. 2163 relating to negligent homicide. This bill will make it a class A felony for a person who causes the death of another while operating a vehicle in a negligent manner and under the influence of an intoxicant if the person has one or more convictions for operating a vehicle under the influence of an intoxicant within 20 years of the instant offense, a suspended and revoked license and privilege to operate a vehicle due to driving while under the influence of an intoxicant, or the person is a highly intoxicated driver.

The DOT recommends clarification under this offense for what is meant by the "time of the event," license revocation qualifications, and what constitutes previous convictions.

Thank you for the opportunity to provide testimony.