

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**

February 13, 2020

HS.B. No. 2001: RELATING TO MANSLAUGHTER

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

The Office of the Public Defender respectfully opposes H.B. No. 2420, which would amend HRS Sect. 707-702 to include the following passage:

- (c) The person causes the death of another person, having demonstrated willful and wanton disregard of the need to exercise reasonable care, which was likely to cause foreseeable grave injury or harm to one or more persons, property, or both.

(Page 1, line 13 to 17).

The terms “willful” and “wanton” are not defined. Likewise, there is no language indicating what is meant by “likely to cause” or “foreseeable grave injury”. These terms are not defined in HRS Sect. 707-700 which defines other terminology in our current “Offenses Against the Person”, which includes Murder, Attempted Murder, Manslaughter, the various degrees of Assault and Attempted Assault, etc.

According to Black’s Law Dictionary, 11th edition, “willful,” “wanton,” and “willful and wanton misconduct” are defined as follows:

Willful: Voluntary and intentional, but not necessarily malicious. A voluntary act becomes will, in law, only when it involves conscious wrong or evil purpose on the part of the actor, or at least inexcusable carelessness, whether the act is right or wrong. The term willful is stronger than voluntary or intentional; it is traditionally the equivalent of malicious, evil, or corrupt. Cf. Wanton.

“The word ‘wilful’ or ‘wilfully’ when used in the definition of a crime, it has been said time and again, means only intentionally or purposely as distinguished from accidentally or negligently and does not require any actual impropriety, while on the other hand it has been stated with equal repetition and insistence that the requirement added by such a word is not satisfied unless there is a bad purpose or evil intent. Rollin M. Perkins & Ronald N. Boyce, Criminal Law 875-76 (3d ed. 1982).

Wanton: Unreasonably or maliciously risking harm while being utterly indifferent to the consequences. In criminal law, wanton usu[ally] connotes malice (in the criminal-law sense), while reckless does not. Cf. Reckless, Willful.

“Wanton differs from reckless both as to the actual state of mind and as to the degree of culpability. One who is acting recklessly is fully aware of the unreasonable risk he is creating, but may be trying and hoping to avoid any harm. One acting wantonly may be creating no greater risk of harm, but he is not trying to avoid it and is indifferent to whether harm results or not. Wanton conduct has properly been characterized as ‘vicious’ and rates extreme in the degree of culpability. The two are not mutually exclusive. Wanton conduct is reckless plus, so to speak.” Rollin M. Perkins & Ronald N. Boyce, *Criminal Law* 879-80 (3d ed. 1982).

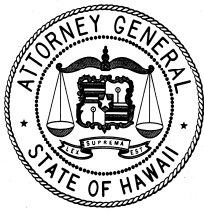
Willful and wanton misconduct: Conduct committed with an intentional or reckless disregard for the safety of others, as by failing to exercise ordinary care to prevent a known danger to discover a danger. See gross negligence.

Gross negligence: 1. A lack of even slight diligence or care. The difference between gross negligence and ordinary negligence is one of degree and not of quality. Gross negligence is traditionally said to be the omission of even such diligence as habitually careless and inattentive people do actually exercise in avoiding danger to their own person or property. – Also termed willful and wanton misconduct. 2. A conscious, voluntary act or omission in reckless disregard of a legal duty and of the consequences to another party, who may typically recover exemplary damages – Also termed reckless negligence, willful negligence, willful and wanton negligence; willful and wanton misconduct; hazardous negligence; magna neglegentia.

As this illustrates, outside legal sources define “willful” and “wanton” using terms such as “intentional” or “reckless” in the definitions of those words. HRS Sect. 702-206 defines the “states of mind” that are used in our Penal Code, namely “intentional”, “knowing”, “reckless” and “negligent”. There are going to be serious problems in having an offense that is defined using “intentional”, for example, when the offense is intended to be different from our current offenses using those states of mind.

There is a structure to our penal code which assists in applying the charging of offenses fairly and appropriately. The language of the offenses within that structure have largely been passed upon by our state Supreme Court. Dropping in a clause that does not track language within our penal code, does not offer definitions for vague terms and will necessarily result in time-consuming legal challenges is not a reasonable solution to problems sought to be addressed by this proposal.

Thank you for the opportunity to comment on this measure.



**TESTIMONY OF
THE DEPARTMENT OF THE ATTORNEY GENERAL
THIRTIETH LEGISLATURE, 2020**

ON THE FOLLOWING MEASURE:

H.B. NO. 2001, RELATING TO MANSLAUGHTER.

BEFORE THE:

HOUSE COMMITTEE ON JUDICIARY

DATE: Thursday, February 13, 2020 **TIME:** 2:05 p.m.

LOCATION: State Capitol, Room 325

TESTIFIER(S): Clare E. Connors, Attorney General, or
Michelle M.L. Puu, Deputy Attorney General

Chair Lee and Members of the Committee:

The Department of the Attorney General appreciates the intent of this bill, but has concerns.

This bill proposes an additional means of charging the offense of Manslaughter. However, it is unclear what type of conduct would fall under the proposed subsection (c) rather than the existing subsection (a).

We would appreciate the opportunity to work with the committee on appropriate wording that effectuates the intent of the bill. Thank you for the opportunity to testify.

Justin F. Kollar
Prosecuting Attorney



Rebecca Vogt Like
Second Deputy

Jennifer S. Winn
First Deputy

Diana Gausepohl-White
Victim/Witness Program Director

OFFICE OF THE PROSECUTING ATTORNEY

County of Kaua'i, State of Hawai'i

3990 Ka'ana Street, Suite 210, Līhu'e, Hawai'i 96766
808-241-1888 ~ FAX 808-241-1758
Victim/Witness Program 808-241-1898 or 800-668-5734

**THE HONORABLE CHRIS LEE, CHAIR
THE HONORABLE JOY A. SAN BUENAVENTURA, VICE CHAIR
HOUSE COMMITTEE ON JUDICIARY
Thirtieth State Legislature
Regular Session of 2020
State of Hawai'i**

February 13, 2020

RE: H.B. 2001; RELATING TO MANSLAUGHTER.

Chair Lee, Vice Chair San Buenaventura, and members of the House Committee on Judiciary, the Office of the Prosecuting Attorney of the County of Kaua'i submits the following testimony in support of H.B. 2001.

Drunk driving is preventable and results in considerable death and suffering in Hawai'i. This Bill sends a strong message out to those who consider drinking and driving. The detrimental impacts are tremendous.

We support this Bill because:

- According to the Centers for Disease Control and Prevention (CDC), approximately 28 people in the United States die in drunk driving crashes every day. This equates to one fatality every 51 minutes. Further, the cost of drunk driving related crashes totals to more than \$44 billion per year.
- According to 2016 Road Safety Facts data provided by the Department of Transportation (US), National Highway Traffic Safety Administration (NHTSA), 29 people die every day in automotive crashes caused by drunk drivers.
- NHTSA reports that 10,265 lives were lost due to drunk driving crashes in 2015 which accounts to nearly one-third (29%) of all traffic-related fatalities in the United States. That is 10,000+ lives that could have been prevented in one year alone.

- According to Mothers Against Drunk Driving (MADD) statistics, 34 lives loss were attributed to drunk driving crashes which accounts to one-quarter (28%) of all traffic-related fatalities in Hawaii.
- Our loved ones could be here today and gone tomorrow. By not taking action, their lives are always at jeopardy when traveling on our highways and byways. This law will be a deterrent and help bring to justice those who have been convicted of these crimes.

For these reasons, the Office of the Prosecuting Attorney supports the passage of H.B. 2001. Thank you for this opportunity to testify.

Hawai'i Construction Alliance

P.O. Box 179441
Honolulu, HI 96817
(808) 220-8892

February 13, 2020

The Honorable Chris Lee, Chair
The Honorable Joy San Buenaventura, Vice Chair
and members
House Committee on Judiciary
415 South Beretania Street
Honolulu, Hawai'i 96813

RE: Strong Support for HB 2001 Authorizes manslaughter prosecutions for wilful and wanton disregard of the need to exercise reasonable care that results in the death of another person.

Dear Chair Lee, Vice Chair Buenaventura, and members:

The Hawai'i Construction Alliance is comprised of the Hawai'i Regional Council of Carpenters; the Laborers' International Union of North America, Local 368; the Operative Plasterers' and Cement Masons' Union, Local 630; International Union of Bricklayers & Allied Craftworkers, Local 1; and the Operating Engineers, Local Union No. 3. Together, the member unions of the Hawai'i Construction Alliance represent 15,000 working men and women in the basic crafts of Hawai'i's construction industry.

Since many of our members travel across the state visiting multiple job sites, we are especially concerned about their safety while driving.

And with several severe accidents involving drugs and alcohol, or extremely negligent behavior, we hope that this change in the law will help deter this behavior and make our roadways safer.

Therefore, we strongly ask for your committee's favorable action on HB 2001.

Mahalo,



Nathaniel Kinney
Executive Director
Hawai'i Construction Alliance
execdir@hawaiiconstructionalliance.org



INTERNATIONAL ASSOCIATION OF BRIDGE, STRUCTURAL, ORNAMENTAL AND REINFORCING IRON WORKERS

Affiliated with A.F.L.-C.I.O.

LOCAL UNION NUMBER 625

94-497 UKEE STREET • WAIPAHU, HAWAII 96797

T.G. Paris

President Emeritus

February 13, 2020

2:05 pm

Representative Chris Lee, Chair

Conference Room 325

State Capitol

415 South Beretania Street

RE: HB2001 – RELATING TO MANSLAUGHTER

Aloha Chair Chris Lee, Vice Chair Joy San Buenaventura, and members of the committee:

I **SUPPORT** the intent of HB2001. This bill authorizes manslaughter prosecutions for wilful and wanton disregard of the need to exercise reasonable care that results in the death of another person. This bill, if enacted, will offer prosecutors another means by which to help to safeguard our loved ones by ensuring that our community understands that it is not okay to drink alcohol and drive and discourage drinking and driving no matter what. The enactment of this bill will help protect all our community members on the road and decrease the amount of families that receive the terrible news of the death of a loved one due to driving under the influence of alcohol.

Sincerely,

Joseph V. O'Donnell
Business Manager,
Financial Secretary-Treasurer



LIUNA!

HAWAII LABORERS UNION (LIUNA) LOCAL 368
1617 Palama Street
Honolulu, Hawaii 96817

PETER A. GANABAN
*Business Manager/
Secretary-Treasurer*

ALFONSO OLIVER
President

JOBY NORTH II
Vice President

TONI FIGUEROA
Recording Secretary

JAMES DRUMGOLD JR.
Executive Board

ORLANDO PAESTE
Executive Board

JOSEPH YAW
Executive Board

MARTIN ARANAYDO
Auditor

RUSSELL NAPIHA'A
Auditor

MARK TRAVALINO
Auditor

ALFRED HUFANA JR.
Sergeant-At-Arms

Hearing: JUD
Date: February 13, 2020
Place: Room 325
Time: 2:05 pm

RE: Support for HB2001 Authorizes manslaughter prosecutions for willful and wanton disregard of the need to exercise reasonable care that results in the death of another person.

Aloha Chair Lee, Vice-Chair San Buenaventura, and Committee Members,

The Hawaii Laborer's Union represents over 5,000 working and retired men and women across the State of Hawaii and we **SUPPORT** HB2001 that Authorizes manslaughter prosecutions for willful and wanton disregard of the need to exercise reasonable care that results in the death of another person.

We feel that while the act of driving while intoxicated resulting in the death of another may not rise to the level of voluntary manslaughter. A willful and wanton disregard to failure to exercise reasonable care after an accident that ultimately will result in the death of another (such as fleeing the scene after an accident to render aid), is a morally deplorable act meeting the criteria of "willful and wanton" and should be punishable to a higher degree.

Therefore, the Hawaii Laborers' Union; Local 368 **SUPPORTS HB2001**.

LIUNA Local 368
1617 Palama Street
Honolulu, HI 96817
Phone: (808) 841-5877
Fax: (808) 847-7829
www.local368.org

Feel the Power



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

LATE

February 13, 2020

To: Representative Chris Lee, Chairman, Committee on Judiciary;
Rep. Joy A. San Buenaventura, Vice Chair; and members of the
Committee

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

Re: House Bill 2001 – **Relating to Manslaughter**

The Hawaii Chapter of Mothers Against Drunk Driving is testifying in support of the intent of House Bill 2100, relating to Manslaughter.

MADD has no positions on specific sentencing in cases of injury or death caused by an impaired driver. Our organization supports the victim's family and their wishes for "justice". Some families are passionate about the kind of sentence they want to see from the Court. Other families choose not to focus on the offender's trial or its results.

However, MADD is concerned about the recent extreme differences which can occur in the Court's sentencing of impaired individuals who have caused a highway fatality. The offender in a recent Kauai case was charged with Manslaughter and the Court issued a sentence which included life-time imprisonment. On the other hand, last year in the Honolulu Circuit Court, a judge sentenced an offender with 5 years probation and only 30 days of actual prison time.

Yes, the specifics of these cases were somewhat different and the County Prosecutor's offices were different but it is still very difficult to understand this disparate sentencing. Although MADD understands the need to have flexibility in sentencing, this

extreme situation moves us to consider support for a charge of Manslaughter for an alcohol and/or drug impaired driver who causes the death of an innocent person.
Thank you for this opportunity to submit testimony.



February 12, 2020

Testimony Supporting HB2001

Aloha Chair Lee, Vice Chair San Buenaventura, and esteemed members of the Committee on Judiciary:

The Hawaii Bicycling League strongly supports HB2001 Relating to Manslaughter. The definition of manslaughter is amended to add: The person causes the death of another person, having demonstrated wilful and wanton disregard of the need to exercise reasonable care, which was likely to cause foreseeable grave injury or harm to one or more persons, property, or both.

The sickening loss of life and health by vehicle operators who care nothing for the safety of others, and only think about their convenience or pleasure, must be stopped. Streets are public places. We all deserve to be safe on our streets.

Punishment for committing traffic violence is too lenient. Road users are not afraid of the consequences of their willful and wanton disregard of the need to exercise reasonable care, because their sentences are short, or probation is granted after 18 months. To serve 18 months for killing someone is not a deterrent.

Hawaii law needs to create a mindset where driving impaired, driving distracted, and driving recklessly will result in long prison terms for those who disregard the rights and lives of others. Other countries in Asia and northern Europe have created the safest streets in the world by designing their streets to accommodate all users, and punishing those who act contrary to rules set for safety.

In addition, although not the subject of this bill, taking away the driver's license or the vehicle upon impaired driving would also help change the current mindset.

Ride and Drive Aloha,

Daniel Alexander
Co-Executive Director
Hawaii Bicycling League
808 275 6717, daniel@hbl.org

Chad Taniguchi
Director Emeritus
Hawaii Bicycling League
808 255 8271, chad@hbl.org

HB-2001

Submitted on: 2/11/2020 2:24:25 PM

Testimony for JUD on 2/13/2020 2:05:00 PM

Submitted By	Organization	Testifier Position	Present at Hearing
Dara Carlin, M.A.	Individual	Support	No

Comments:

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

TESTIMONY TO THE HOUSE COMMITTEE ON JUDICIARY
THURSDAY, FEBRUARY 13, 2020; 2:05 P.M.
STATE CAPITOL, CONFERENCE ROOM 325

RE: SENATE BILL NO. 2420, RELATING TO MANSLAUGHTER.

Chair Lee, Vice Chair San Buenaventura, 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). However, 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 Senate Bill No. 2420, RELATING TO MANSLAUGHTER.

As received by your Committee, this bill would:

- (1) Clarify that a person who causes the death of another person, having demonstrated wilful and wanton disregard of the need to exercise reasonable care, which was likely to cause foreseeable grave injury or harm to one or more persons, property, or both commits the offense of manslaughter; and
- (2) States the Legislature's intent that when an offender commits a crime that results in the death of another person, and the facts of the case demonstrate the offender's wilful and wanton disregard of the need to exercise care, the prosecutor has an obligation to charge the offender with manslaughter.

Three years, 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.

Testimony on House Bill No. 2001
Thursday, February 13, 2020; 2:05 p.m.
Page 2

The Werner Ohana felt very strongly that the Office of the Prosecutor, City and County of Honolulu erred in charging the offender with Negligent Homicide in the First Degree (See, Section 7-7-702.5, Hawaii Revised Statutes (HRS)). This offense is a Class B Felony, the maximum penalty of which is 10 years in prison. Instead, they had wanted the offender charged with Manslaughter (See, Section 707-702, HRS), a Class A Felony, the maximum penalty of which is twenty years to life.

In reviewing the statutes for both offenses, it appeared to me that the law concerning deaths resulting from the negligence of another is vague.

For Manslaughter, a person commits the offense if the person ". . . *recklessly causes the death of another. . .*" Under Negligent Homicide in the First Degree, a person commits the offense if the 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; or . . . [a] vulnerable user by operation of a vehicle in a negligent manner. . .*"

A statute fails to meet the requirements of the Due Process Clause of the Fourteenth Amendment when ". . . it is so vague and standardless that it leaves the public uncertain as to the conduct it prohibits. . ." (See, *Giaccia v. Pennsylvania*, 382 U.S. 399 (1966)). In addition, the Ninth Circuit further cited *City of Chicago v. Jesus Morales*, 527 U.S. 41 (1999) when it wrote, "*Vagueness may invalidate a criminal law for either of two independent reasons: First, it may fail to provide the kind of notice that will enable ordinary people to understand what conduct it prohibits; second, it may authorize or even encourage arbitrary and discriminatory enforcement.*" (See, *Desertrain v. City of Los Angeles*, 754 F.3d 1147 (2014)).

Despite this, at the time, it was felt that drafting a bill to address the vague nature of these two offenses would require a considerable amount of time to educate lawmakers and the general public on this problem. Upon further research, it was learned that under Hawaii law, judges had the discretionary authority to extend the sentences of persons convicted of certain crimes that were especially heinous, such as those committed against the elderly and children, and hate crimes. The Werner Ohana saw the inherent fairness that having the judge impartially review the totality of the facts of a case and allowing the judge to lengthen the term of imprisonment when it was so warranted.

Accordingly, during the Regular Session of 2018, I drafted a bill for the family to add certain cases of negligent homicide to the felonies that may be subject to an extended term of imprisonment. With this Committee's assistance and the help of your colleagues, that bill was approved by the Legislature and signed into law. It became known as "Kaulana's Law".

Testimony on House Bill No. 2001
Thursday, February 13, 2020; 2:05 p.m.
Page 3

However, shortly before the Adjournment Sine Die of the 2018 Regular Session, the Hawaii Supreme Court issued its decision in *Robert Flubacher v. State of Hawaii*, SCWC-15-0000363. To wit, the Court opined that ". . . any extended term of sentence imposed after June 28, 2000, in which the court, not a jury, found the fact of 'necessary for protection of the public'. . . is in violation of the Sixth Amendment as held in *Apprendi v. New Jersey*, 530 U.S. 466 (2000)."

Kaulana's Law was intended to provide a statutory mechanism that would have allowed the Court the discretion to extend the sentence of a person convicted if the crime warranted extra punishment because of the egregious actions of the person convicted of the crime. In light of *Flubacher*, this approach does not appear to be legally permissible.

And so, the family asked me again to research the law to see whether there was a way to fix this problem. The solution that was found was to distinguish levels of negligence to have the more serious instances be charged with the harsher offense.

The definition of gross negligence is "the willful and wanton disregard of the need to exercise reasonable care." This is a standard that is well established in case law. The bill before you would do two things. First it specifically adds gross negligence as an element for which a person may be charged with Manslaughter. Second, it asserts the Legislature's intent that the Prosecutor has an obligation to charge an offender with Manslaughter if the facts of the case demonstrates the offender's gross negligence. This should make clear the types of actions that constitute an offense and eliminate any statutory ambiguity that could result in arbitrary enforcement.

And that is what we currently have in the City and County of Honolulu. In my research, I have not come across a single instance where the Prosecutor's Office had charged a person for Manslaughter when the offenders negligent actions involving a motor vehicle lead to the death of another. Recently, there have been numerous high-profile cases -- extremely egregious cases -- in which the Prosecutor's Office failed to charge the offender with Manslaughter. These include:

- A commercial driver operating a loaded trolley in Kakaako runs over a pedestrian and drags him 100 feet. When authorities stop him, they find an open bottle of liquor and him smelling of alcohol. The driver was found to have a blood-alcohol level over the .08 threshold;
- A pedestrian in a crosswalk in Nanakuli was hit by a speeding motorist. The impact threw the pedestrian over 200 feet. The driver only stopped after the car shut

down more than three-quarters of a mile from the point of impact. At the time the police confronted the driver, she was in the process of putting a tow cable onto her car from a friend's car. She was found to have a blood-alcohol level over the .08 threshold;

- A pedestrian was struck by a motorist on the North Shore. The driver failed to stop. After an extended search, the driver was found miles away in a vacant parking lot passed out drunk on the ground with the door left open. He was found to have a blood-alcohol level over the .08 threshold;

In all of these cases, the Prosecutor's Office charged the offenders with Negligent Homicide in the First Degree rather than Manslaughter.

But this hasn't been the case on the neighbor islands. Most recently, the Hawaii Supreme Court affirmed the decision in a Kauai case where a drunk driver involved in an accident that led to the death of another was convicted of Manslaughter.

As noted above, the standard by which vagueness becomes unconstitutional is when ambiguity in the language of the statute leads to arbitrary enforcement. As a concerned citizen, I submit that the ambiguity of these statutes have seriously undermined justice in our State. It is my hope that this Committee will agree that these statutes need to be fixed and that this bill be approved for further consideration.

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

HB-2001

Submitted on: 2/11/2020 4:51:57 PM

Testimony for JUD on 2/13/2020 2:05:00 PM

Submitted By	Organization	Testifier Position	Present at Hearing
pua auwae	Individual	Support	No

Comments:

I fully support this bill

Ron Shimabuku
ronkshimabuku@gmail.com
#808-295-4954

Testimony on House Bill No. 2001
RELATING TO MANSLAUGHTER
Thursday, February 13, 2020
2:05pm
Conference Room 325
State Capitol
415 South Beretania Street

Re: Supporting House Bill No. 2001, Relating to Manslaughter

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

My name is Ron Shimabuku and I am the hanai brother and godparent to the late Kaulana Matthew Auwae Werner, who as you are aware was the victim of a drunk driving, hit-and-run crash which occurred on the evening of April 24, 2016 in Nanakuli, Hawaii. I am requesting that House Bill No. 2001, also referred to as Kaulana's Bill 2.0, which requires manslaughter prosecutions for wilful and wanton disregard of the need to exercise reasonable care that results in the death of another person be passed into law.

As a concerned citizen of Hawaii and having lost a loved one to a drunk driver, **I strongly support this bill**. This bill adds to the deterrence for individuals who willfully drink, drive, take innocent lives by way of reckless behavior, and fail to render aid. Further, the current criminal punishment for individuals convicted of this crime is not fitting and not just in the eyes of our community.

Our belief in the legislative process was realized through Kaulana's Law where our intent was to place the enhanced sentencing option for offenders convicted of Negligent Homicide and Failing to Render Aid with our judges who have the training, knowledge and expertise to make a just determination. On September 20, 2019, Kaulana's Law was put to the test and determined not to be applied as the evidence presented was insufficient. With this, we took the

drawing board once again to identify other areas of the law and process that could be challenged. We identified an opportunity to require the prosecuting attorney to charge Manslaughter at the forefront of the indictment.

Through informal research, we have compiled a list of drunk driving and hit-and-run crashes that occurred in Hawaii over the course of several years. This is by no means a comprehensive nor exhaustive list, however, it reflects the concern that is presented through the intent of this bill; i.e. the seriousness of these crimes and the charge(s) that are applied by the prosecuting attorney. I would ask that as you review these cases take note of the charges brought up against these offenders by the prosecuting attorney at the time of the offense.

Date	Location	Charge	Case Result	Case Description
October 7, 2000	Oahu	Manslaughter	20-year sentence	Offender's Ford Thunderbird broadsided the victim's Honda Civic, killing the victim almost instantly. This is after the offender went on what prosecutors called a seven-hour drinking binge.
January 2, 2001	Oahu	Manslaughter	20-year sentence	Offender was driving while intoxicated, crossed the center line and hit another vehicle, killing its driver. Victim was heading to work.
July 22, 2008	Oahu	1. Negligent Homicide 2. Failing to render aid	1.5-year sentence	Victim died after a vehicle hit the victim bicycling home along Kamehameha Highway.
March 23, 2010	Oahu	1. Negligent Homicide 2. Failing to render aid	10-year sentence	Offender fled the scene after a motorcycle collided with the victim's truck on Farrington Highway near Waipahu Intermediate last December. The motorcyclist died.
December 17, 2010	Oahu	1. Negligent Homicide	10-year sentence	Victim was riding with a group of bicyclists on Kamehameha Highway near

		2. Failing to render aid		Leilehua Golf Course Road when the victim was struck from behind. The vehicle kept going.
November 20, 2011	Oahu	1. Negligent Homicide 2. Failing to render aid	10-year sentence	Victim was struck and killed in a crosswalk
April 11, 2012	Big Island	1. Negligent Homicide 2. Failing to render aid	10-year sentence	Offender struck and killed a bicyclist in Hilo.
June 20, 2015	Maui	Manslaughter (3 counts)	Pending	Three victims died after being ejected from the bed of a Dodge pickup truck in the collision on what was then Mokulele Highway and is now Maui Veterans Highway. The Dodge truck was turning left from the highway into the Maui Raceway Park entrance when it was hit by a white Toyota pickup truck that was traveling north on the highway, police said.
April 24, 2016	Oahu	1. Negligent Homicide 2. Failing to render aid	10-year sentence	Offender was driving under the influence, speeding, struck and killed a pedestrian, then fled the scene.
August 6, 2016	Oahu	1. Negligent Homicide 2. Failing to render aid	Pending	Offender hit and killed the victim who was trimming grass for an elderly woman who lived on Aiea Heights Drive.
April 27, 2017	Kauai	Manslaughter	Life sentence	Offender stole a bottle of vodka from the Big Save supermarket in Kapa'a, got drunk, walked to a nearby house, stole a truck parked out front, and drove down

				the highway at speeds approaching 90 miles an hour, swerving in and out of oncoming traffic, until he the victim's car head-on.
December 23, 2017	Oahu	1. Negligent Homicide (2 counts) 2. Failing to render aid (2 counts)	10-year sentence	Offender's sport utility vehicle was traveling Kahuku-bound on Kamehameha Highway when, for unknown reasons, crossed the center line and plowed into a bus stop on the opposite side of the road. The SUV struck a couple from Portland, Ore. who were sitting at the bus stop.
January 23, 2018	Maui	1. Negligent Homicide 2. Failing to render aid	Pending	The sedan hit the curb at the entrance to the parking lot, then struck the victim.
September 30, 2018	Oahu	1. Negligent Homicide 2. Failing to render aid	10-year sentence	The collision killed the victim while the victim was walking a dog along Farrington Highway.
January 28, 2019	Oahu	Manslaughter (3 counts)	Pending	Three victims died as the offender's truck veered across three lanes, climbed a traffic island, hit six pedestrians, and then crashed into another truck.

There are clearly inconsistencies in the charges applied in these heinous offenses. As an everyday citizen, one can only speculate a reason behind these determinations. However, as a victim having gone through the judicial process, we have reasons to question the process.

Lastly, it should be noted that how the laws of Negligent Homicide and Manslaughter are written in our state will certainly leave room for discretionary authority. Therefore, we

must address this by specifically stating that crimes committed with gross negligence will be charged upfront as Manslaughter.

Thank you for the opportunity to testify. Should you have any questions, please feel free to contact me.

HB-2001

Submitted on: 2/11/2020 8:15:30 PM

Testimony for JUD on 2/13/2020 2:05:00 PM

Submitted By	Organization	Testifier Position	Present at Hearing
Lani Shimabuku	Individual	Support	No

Comments:

My name is Lani Shimabuku, aunty to the beloved Kaulana Matthew Auwae Werner. I am providing written testimony in SUPPORT of House Bill No. 2001, Kaulana's Bill 2.0, which mandates prosecutions for offenders who commit crimes which result in the death of another person, where the facts of the case demonstrate the offender's wilful and wanton disregard of the need to exercise care. We have experienced first hand the failure of the process to ensure the punishment of crimes fits the offense. In our case, the convicted offender wilfully chose to drink, wilfully chose to drive, wilfully chose to drive recklessly, took my nephew's life, wilfully chose to not stop and render aid, and fled the scene. In our eyes, this is a heinous offense that needs to be charged appropriately; i.e. Manslaughter. Please consider this when making a determination on this bill. Mahalo for the opportunity to testify.

HB-2001

Submitted on: 2/11/2020 8:30:30 PM

Testimony for JUD on 2/13/2020 2:05:00 PM

Submitted By	Organization	Testifier Position	Present at Hearing
Randi-Lynn Tam	Individual	Support	Yes

Comments:

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

My name is Randi-Lynn Shimabuku (Tam) and I am the aunt of the late Kaulana Werner. I am providing testimony in support of House Bill No. 2001, also known as Kaulana's Bill 2.0. My ohana has gone through a lot and hearing the leniency in sentencing for the convict in our case added to the frustration. An individual who willfully chooses to drink, willfully drive recklessly, strike and kill my nephew, then willfully drive away without rendering any aid, deserves more than what this convict got; i.e. 10-years for a charge of negligent homicide and 10-years for a charge of failing to render aid - TO BE SERVED CONCURRENTLY! Truly unjust in my eyes! Laws need to be changed for offenders who commit these heinous crimes. I'm asking you to strongly consider mandating the prosecuting attorney to charge Manslaughter for crimes such as these. 20-years to life should be the penalty. Nothing less! Mahalo for the opportunity to testify.

HB-2001

Submitted on: 2/12/2020 6:01:56 AM

Testimony for JUD on 2/13/2020 2:05:00 PM

Submitted By	Organization	Testifier Position	Present at Hearing
mary	Individual	Support	No

Comments:

i fully support this bill

HB-2001

Submitted on: 2/12/2020 8:11:25 AM

Testimony for JUD on 2/13/2020 2:05:00 PM

Submitted By	Organization	Testifier Position	Present at Hearing
Ronnelle Werner-Celes	Individual	Support	No

Comments:

I Hoku Werner the sister of the beloved Kaulana Werner I love you and I miss you so much!!! I fully support bill HB2001 whole heartedly. My life is forever tarnished by her stupid actions. I believe people who act in these such heinous crimes be punished to it's full extent. As for Myisha Lee Armitage, it should of been MANSLAUGHTER. 10 years for my brother's life..... RIDICULOUS!!!!!!!!!!!!!!!!!!!!!! Change starts NOW!!!

HB-2001

Submitted on: 2/12/2020 10:45:25 AM

Testimony for JUD on 2/13/2020 2:05:00 PM

Submitted By	Organization	Testifier Position	Present at Hearing
Isturm	Individual	Support	No

Comments:

I strongly support House Bill No. 2001. The current criminal punishment for individuals convicted of negligent homicide in the first degree is not fitting and not just in the eyes of our community. It is NOT enough! I am requesting that House Bill No. 2001 which requires manslaughter prosecutions for willful and wanton disregard of the need to exercise reasonable care that results in the death of another person be passed into law.

Lisa Hyatt
67-436 Aikaula St.
Waialua, HI 96791

Wednesday, February 12, 2020

I support House Bill 2001 that authorizes manslaughter prosecutions for willful and wanton disregard of the need to exercise reasonable care that results in the death of another person.

I am Lisa Hyatt, daughter of the late Dr. Eugene Chin. My father was killed by an intoxicated driver on the morning of Sunday, September 30, 2018. He was walking his dog on the shoulder in Mokuleia when he was plowed over by Jeremy Lee, who continued on Farrington Highway after throwing my father's body down the road. He also almost hit a biker before he killed my father. Jeremy Lee continued to drive recklessly to Waialua where he passed out next to his car which is where he was later found and taken to Wahiawa General Hospital. He then left my father and hid from the law until he was given an ultimatum by the Sand Island Treatment center to turn himself in or be removed from the center. Only then was he finally in custody.

Jeremy Lee willingly drank a lot of alcohol and took illegal drugs before getting behind the wheel. When it came to sentencing, he was given 10 years, but we will see what he actually serves after the parole hearing. To get only 10 years after drunk driving and hit and run killing, is inadequate. There are many bad choices that he made and it could have been avoided. My father should still be here with his wife, his dog, his daughter and grandchildren. He missed out on so many celebrations and he is sorely missed. No amount of prison time can bring my father back, but there need to be tougher consequences for those that make these disastrous decisions. Our prison system also needs to be a better job of preparing prisoners for returning back to the population by giving them mental health and rehabilitation care, and educational assistance in trade school and academics.

Please pass House Bill 2001 to keep our communities safe.