



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

LATE

ON THE FOLLOWING MEASURE:

S.B. NO. 2420, RELATING TO MANSLAUGHTER.

BEFORE THE:

SENATE COMMITTEE ON JUDICIARY

DATE: Friday, January 31, 2020

TIME: 10:00 a.m.

LOCATION: State Capitol, Room 016

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

Chair Rhoads 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.

STATE OF HAWAI‘I
OFFICE OF THE PUBLIC DEFENDER

LATE

Testimony of the Office of the Public Defender,
State of Hawai‘i to the Senate Committee on Judiciary

January 31, 2020

S.B. No. 2420: RELATING TO MANSLAUGHTER

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

The Office of the Public Defender respectfully opposes S.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.

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

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808-241-1888 ~ FAX 808-241-1758

Victim/Witness Program 808-241-1898 or 800-668-5734

LATE

**THE HONORABLE KARL RHOADS, CHAIR
THE HONORABLE JARRET KEOHOKALOLE, VICE CHAIR
SENATE COMMITTEE ON JUDICIARY
Thirtieth State Legislature
Regular Session of 2020
State of Hawai'i**

January 31, 2020

RE: S.B. 2420; RELATING TO MANSLAUGHTER.

Chair Rhoads, Vice Chair Keohokalole, and members of the Senate Committee on Judiciary, the Office of the Prosecuting Attorney of the County of Kaua'i submits the following testimony in support of S.B. 2420.

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 S.B. 2420. Thank you for this opportunity to testify.

SB-2420

Submitted on: 1/29/2020 9:05:14 AM

Testimony for JDC on 1/31/2020 10:00:00 AM

Submitted By	Organization	Testifier Position	Present at Hearing
Tenari Ma'afala	Individual	Support	No

Comments:

The honorable Chair Karl Rhoads, Vice Chair Jarrett Keohokalole, and Members of the Committee:

My name is Tenari Ma'afala and I am the Executive Director of SHOPO (The State of Hawaii Organization of Police Officers). I am humbly requesting your support of Senate Bill No. 2420 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.

As a very concerned citizen of Hawaii and a recent Retiree of the Honolulu Police Department, I strongly support this bill. This bill adds to the deterrence for individuals who wilfully 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 and hearts of surviving family members, and our entire communities.

Drunk driving is preventable and without stringent laws in place to combat this criminal and heinous act will be repeated and we will continue to lose loved ones. This bill will send a strong message to everyone to "Think before Drinking and Driving." The detrimental impacts are tremendously devastating to the innocent occupants of the vehicle(s); surviving family members; and our entire communities.

I kindly ask you to please consider the following when contemplating to support this bill:

- According to the Centers for Disease Control and Prevention (CDC), every day, approximately 29 people in the United States die in drunk driving crashes. This equates to one fatality every 50 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 loss 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 tragically gone tomorrow. By not taking action NOW, their lives are always at jeopardy when traveling on our highways and byways. Place yourselves in the shoes of the victims. Think about the lives you will save by making a choice to support a law that would be a deterrence and bring justice to those who have been convicted of these heinous crimes.

For these reasons, I humbly ask that you please support this bill. It is a benefit owed to the health and well-being of innocent lives-of our families and communities, and without your commitment to make this change, lives will continue to be at stake.

Mahalo for the opportunity to testify!

Tenari Ma'afala

#847-4676



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

LATE

January 31, 2020


Senator Karl Rhoads, Chair
Senate Committee on Judiciary
State Capitol
Honolulu, HI 96813

RE: SB2420 Relating to Manslaughter

Aloha Chair Rhoads and honorable members:

We **SUPPORT** the intent of SB2420. This bill authorizes manslaughter prosecutions for willful and wanton disregard of the need to exercise reasonable care that results in the death of another person. This would allow for an additional means of prosecution in addition to that of negligent homicide for those cases that meet the elevated criteria. Victims of willful and wanton disregard of the need to exercise reasonable care that results in death, including victims of drunk driving crashes are given permanent life sentences. This bill allows for a means to prosecute with graver punishment if such prosecution is warranted. We believe that this bill, if enacted will help to be a deterrent and likely saves lives.

Sincerely,


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



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

January 31, 2020

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

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

Re: Senate Bill 2420 – Relating to Manslaughter

The Hawaii Chapter of Mothers Against Drunk Driving is testifying in support of the intent of Senate Bill 2420, 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.



**OPERATIVE PLASTERERS' AND CEMENT MASONS'
INTERNATIONAL ASSOCIATION LOCAL #630, AFL-CIO**

2251 North School Street • Honolulu, HI 96819
Phone No.: (808) 841-0491 • Fax No.: (808) 847-4782



LATE

January 30, 2020

To: Chair Karl Rhoads, Vice Chair Jarrett Keohokalole, and Members of the
Committee:

Re: Bill No. 2420 - RELATING TO MANSLAUGHTER

My name is Peter T. Iriarte and I am the Business Manager/Financial Secretary-Treasurer of OPCMIA, Local 630. I am requesting that Senate Bill No. 2420 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.

Drunk driving is preventable and without severe laws in place to combat this disease it will continue and we will lose loved ones. This bill sends a strong message out to those who consider drinking and driving. The detrimental impacts are tremendous.

This bill serves the public good by ensuring that the victim and the it's family obtains the justice that they seek, as well deterring such actions by the general public.

For these reasons, I ask that **you support this bill.** It is a mere benefit to the health and well-being of our communities and without your commitment to make this change, lives will continue to be at stake.

Thank you for the opportunity to testify!

Peter T. Iriarte
2251 N School St.
Honolulu, HI 96819
(808)841-0491

SB-2420

Submitted on: 1/29/2020 11:21:18 AM

Testimony for JDC on 1/31/2020 10:00:00 AM

Submitted By	Organization	Testifier Position	Present at Hearing
Ronnelle Werner-Celes	Testifying for DK Movement	Support	Yes

Comments:

Testimony on Senate Bill No. 2420

RELATING TO MANSLAUGHTER

Friday, January 31, 2020

10:00am

Conference Room 016

State Capitol

415 South Beretania Street

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

My name is Hoku Werner-Celes and I am the sister of the late beloved Kaulana Matthew Auwae Werner. Our lives were drastically changed on the night of April 24th, 2016. Kaulana was fatally struck and killed and for the past three and half years it was titled as an "alleged drunk driver" she struck him with such force he was internally decapitated. She failed to stop and render aid. She tried to cover up with lies upon lies. She was sentenced on Nov 1, 2019 1,286 days later. She was charged on two

counts Punishable up to 10 years in prison COUNT 1, ACCIDENTS INVOLVING SERIOUS BODILY INJURY OR DEATH, COUNT 2, NEGLIGENT HOMICIDE IN THE FIRST DEGREE. that is unacceptable. We need harsher penalties for horrible acts of this nature. This is why I am requesting that Senate Bill No. 2420 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.

As a CONCERNED CITIZEN of Hawaii, 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.

Drunk driving is preventable and without stringent laws in place to combat this disease it will continue and we will lose loved ones. This bill sends a strong message out to those who consider drinking and driving. The detrimental impacts are tremendous.

I kindly ask you to consider the following when contemplating to support this bill:

- According to the Centers for Disease Control and Prevention (CDC), approximately 28 people in the United States die in drunk driving crashes. 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 loss 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 NOW, their lives are always at jeopardy when traveling on our highways and byways. Place yourselves in the shoes of the victims. Think about the lives you will save by making a choice to support a law that would be a deterrence and bring justice to those who have been convicted of these heinous crimes.

For these reasons, I ask that **you support this bill**. It is a mere benefit to the health and well-being of our communities and without your commitment to make this change, lives will continue to be at stake.

Thank you for the opportunity to testify!

I love you my dearest brother. I miss you beyond words. May your beautiful soul rest in heavenly peace.

Hoku Werner-Celes

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, JANUARY 31, 2020; 10:00 A.M.
STATE CAPITOL, CONFERENCE ROOM 016

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

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). 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 Senate Bill No. 2420
Friday, January 31, 2020
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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 Senate Bill No. 2420
Friday, January 31, 2020
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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

Testimony on Senate Bill No. 2420

Friday, January 31, 2020

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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 a well-publicized case, a motorist fleeing the police after a routine traffic stop, led the police on a high-speed chase through Kakaako before crashing into pedestrians near Ward Center.

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 has 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.

SB-2420

Submitted on: 1/30/2020 7:51:34 AM

Testimony for JDC on 1/31/2020 10:00:00 AM

Submitted By	Organization	Testifier Position	Present at Hearing
William Hankins	Individual	Support	No

Comments:

As a CONCERNED CITIZEN of Hawaii, 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.

Drunk driving is preventable and without stringent laws in place to combat this disease it will continue and we will lose loved ones. This bill sends a strong message out to those who consider drinking and driving. The detrimental impacts are tremendous.

I kindly ask you to consider the following when contemplating to support this bill:

- According to the Centers for Disease Control and Prevention (CDC), approximately 28 people in the United States die in drunk driving crashes. 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 NOW, their lives are always at jeopardy when traveling on our highways and byways. Place yourselves in the shoes of the victims. Think about the lives you will save by making a choice to support a law that would be a deterrence and bring justice to those who have been convicted of these heinous crimes.

For these reasons, I ask that **you support this bill**. It is a mere benefit to the health and well-being of our communities and without your commitment to make this change, lives will continue to be at stake.

Thank you for the opportunity to testify!

SB-2420

Submitted on: 1/29/2020 7:09:05 PM

Testimony for JDC on 1/31/2020 10:00:00 AM

Submitted By	Organization	Testifier Position	Present at Hearing
Hoku Kila	Individual	Support	No

Comments:

I support SB2420! Defending and standing in the gap for all victims of DUI cases.

SB-2420

Submitted on: 1/29/2020 8:23:02 PM

Testimony for JDC on 1/31/2020 10:00:00 AM

Submitted By	Organization	Testifier Position	Present at Hearing
Nygel Martin	Individual	Support	No

Comments:

I support this measure.

SB-2420

Submitted on: 1/30/2020 8:14:08 AM

Testimony for JDC on 1/31/2020 10:00:00 AM

Submitted By	Organization	Testifier Position	Present at Hearing
Richard Mole	Individual	Support	No

Comments:

Life post the death of my son Daniel Mole and his friend Jonah Ragsdale who both were killed by drunk driver Sierra Burns on February 19, 2018 has been devastating. To lose a child is one of the greatest hurts one can experience. People who choose to drive drunk need to be held responsible for their careless actions and be held accountable. I will no longer be able to hear his voice calling me "Dad". Nor will we be able to go his favorite beach with him, see him smile, witness his growth throughout life and share of his triumphs. I yearn for my sons embracement, his hug and especially the "I love you Dad". Sadly all things are now only a memory! Sierra Burns robbed Daniel Mole and Jonah Ragsdale of what they were and what the could have become!

I, Richard Mole, Father of the late Daniel Mole support SB2420!

support SB2420

SB-2420

Submitted on: 1/28/2020 12:12:31 PM

Testimony for JDC on 1/31/2020 10:00:00 AM

Submitted By	Organization	Testifier Position	Present at Hearing
Karin Nomura	Individual	Support	No

Comments:

I feel that the addition of "or

(c) 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;***"

is necessary. More so the area highlighted and bolded, as it would apply to construction projects; areas of hazard that were known but not corrected to reasonable care; etc. Which I hope will be added as a defensive measure - besides just as a measure for manslaughter/death, but in any case where foreseeable grave injury or harm to one or more persons, property, or both could occur. As while documentation and laws seemingly exist, the actual enforcement of exercising reasonable care seems remiss. Maybe this will be a further incentive to correct this practice.

SB-2420

Submitted on: 1/29/2020 9:29:34 PM

Testimony for JDC on 1/31/2020 10:00:00 AM

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

Comments:

My name is Lani Shimabuku, aunt to the beloved Kaulana Matthew Auwae Werner. I am providing written testimony in SUPPORT of Senate Bill No. 2420, 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 a 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.

SB-2420

Submitted on: 1/30/2020 4:48:21 AM

Testimony for JDC on 1/31/2020 10:00:00 AM

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

Comments:

My name is Paul Shimabuku. I am requesting that Senate Bill No. 2420 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.

I will make this short and simple to understand. I support this Bill# SB2420 because I'm tired of the excuses defense lawyers will use: "drugs affected/hindered my thinking". Humans choose their actions, the convicted choose to use whatever mind altering drugs, the drugs did not choose the user.

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

Testimony on Senate Bill No. 2420
RELATING TO MANSLAUGHTER
Friday, January 31, 2020
10:00am
Conference Room 016
State Capitol
415 South Beretania Street

Re: Supporting Senate Bill No. 2420, Relating to Manslaughter

Chair Karl Rhoads, Vice Chair Jarrett Keohokalole, 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 Senate Bill No. 2420, 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.

SB-2420

Submitted on: 1/30/2020 9:45:27 AM

Testimony for JDC on 1/31/2020 10:00:00 AM

Submitted By	Organization	Testifier Position	Present at Hearing
Randi-Lynn Tam	Individual	Support	No

Comments:

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

My name is Randi-Lynn Shimabuku (Tam) from Kahaluu, Oahu, and I am the aunt of the late Kaulana Werner. I am providing testimony in **support of Senate Bill No. 2520**, 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.

SB-2420

Submitted on: 1/29/2020 10:37:42 AM

Testimony for JDC on 1/31/2020 10:00:00 AM

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

Comments:

SB-2420

Submitted on: 1/29/2020 10:02:12 AM

Testimony for JDC on 1/31/2020 10:00:00 AM

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

Comments:

fully support this bill 110% percent no more innocent lives taken!

LATE

SB-2420

Submitted on: 1/30/2020 2:24:49 PM

Testimony for JDC on 1/31/2020 10:00:00 AM

Submitted By	Organization	Testifier Position	Present at Hearing
Shauna Kamaka	Individual	Support	No

Comments:

I respectfully submit my testimony in favor of SB2420. I ask that you consider approving SB2420 because people who choose to drink and drive and cause someone else's death should be charged with manslaughter. No one is forcing you to drink alcohol and get behind the wheel. In this day and age of cell phones and services like Uber, there is no reason why someone needs to drive if they choose to drink. People need to be held responsible for their actions. There has been an increase in the number of hit and run deaths caused by drunk drivers and we need to be proactive to deter people from drinking and driving by setting harsher penalties for these crimes. Myisha Armitage was drunk when she hit Kaulana Werner and left him there to die. Her irresponsible actions took someone's life and realistically, she's not even going to spend 10 years in prison. An amazing young man would be alive today if she decided not to drive her car. A harsher penalty will get people thinking twice before they drive impaired. Thank you for your time.

LATE

SB-2420

Submitted on: 1/31/2020 7:35:16 AM

Testimony for JDC on 1/31/2020 10:00:00 AM

Submitted By	Organization	Testifier Position	Present at Hearing
Daphne Manago	Individual	Support	No

Comments:

LATE

SB-2420

Submitted on: 1/30/2020 7:23:02 PM

Testimony for JDC on 1/31/2020 10:00:00 AM

Submitted By	Organization	Testifier Position	Present at Hearing
Rhibecca Martin	Individual	Support	No

Comments:

I support this bill!

LATE

SB-2420

Submitted on: 1/30/2020 3:11:03 PM

Testimony for JDC on 1/31/2020 10:00:00 AM

Submitted By	Organization	Testifier Position	Present at Hearing
paula werner	Individual	Support	Yes

Comments:

LATE

SB-2420

Submitted on: 1/31/2020 8:51:45 AM

Testimony for JDC on 1/31/2020 10:00:00 AM

Submitted By	Organization	Testifier Position	Present at Hearing
Nathaniel Kinney	Testifying for Hawaii Construction Alliance	Support	Yes

Comments:

Dear Members,

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.



**OPERATIVE PLASTERERS' AND CEMENT MASONS'
INTERNATIONAL ASSOCIATION LOCAL #630, AFL-CIO**

2251 North School Street • Honolulu, HI 96819
Phone No.: (808) 841-0491 • Fax No.: (808) 847-4782



January 30, 2020

LATE

To: Chair Karl Rhoads, Vice Chair Jarrett Keohokalole, and Members of the Committee:

Re: Bill No. 2420 - RELATING TO MANSLAUGHTER

My name is Peter T. Iriarte and I am the Business Manager/Financial Secretary-Treasurer of OPCMIA, Local 630. I am in support of the Senate Bill No. 2420 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.

Drunk driving is preventable and without severe laws in place to combat this disease it will continue, and we will lose loved ones. This bill sends a strong message out to those who consider drinking and driving. The detrimental impacts are tremendous.

This bill serves the public good by ensuring that the victim and the its family obtains the justice that they seek, as well deterring such actions by the general public.

For these reasons, I ask that **you support this bill.** It is a mere benefit to the health and well-being of our communities and without your commitment to make this change, lives will continue to be at stake.

Thank you for the opportunity to testify!

Peter T. Iriarte
2251 N School St.
Honolulu, HI 96819
(808)841-0491